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NEGATIVE CAMPAIGNING ON SOCIAL MEDIA SITES: A QUANTITATIVE ANALYSIS OF THE 2019 AUSTRIAN NATIONAL COUNCIL ELECTION CAMPAIGN

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Abstract: *Election campaigns in the age of social media are rapidly changing their character. Due to the declining party loyalty of voters, once stable constituencies have become increasingly volatile and the importance of campaigning has increased. Parties are now thought to be more likely than in the past to opt for negative campaigning. This paper examines the postings that parties or top candidates made on the social media sites Facebook and Twitter during the 2019 National Council election campaign. The results suggest that - at least on social media sites - the cost-benefit analysis of the parties might turn towards negative campaigning, as the average popularity of negative campaigning posts was higher than those that were not tagged with negative campaigning.*

Keywords: *Social Media; Negative Campaigning; Election; Campaign; Political Parties*

INTRODUCTION

Election campaigns in the age of social media are rapidly changing their character (Swanson and Mancini 1996; Gallagher 2003): as voters' party allegiance declines, once-stable constituencies have become increasingly volatile(Drummond 2006; Mair 1997; Mair, Müller, and Plasser 2004). As political parties lose their influence in the electoral market, the importance of campaigning has increased (West 1993, 2005)and parties are now thought to be more likely than in the past to opt for offensive campaigning that targets political opponents (e.g. Mair, Müller, and Plasser 2004). Such a strategy is better known as 'negative campaigning'. Negative campaigning is a strategy used to attract voters by criticizing the opponent (Swanson and Mancini 1996; Geer 2008). Negative campaigning describes running a negative political campaign. In the course of election campaigns, negative campaigning has now established itself globally in the field of political communication. If one follows Schmücking (2015), then negative campaigning is part of the election campaign and thus also part of political communication (Schmücking 2015).

A look at the literature reveals two fundamentally different approaches to defining negative campaigning: a directional as well as an evaluative understanding:

- While the directional understanding assumes that "any mention of the political opponent in one's posting (regardless of whether the criticism is true, false, 'ethically correct', trivial, honest, or dishonest) is already negative campaigning" (Rauh 2016; Surlin and Gordon 1977; Walter 2014)
- The evaluative approach assumes that negative campaigning only prevails when the political opponent is demeaned (Elmelund-Præstekær 2010).

In the context of this thesis, evaluative understanding is used.

A party resorts to negative campaigning to try to become the preferred party of voters and by trying to mitigate positive feelings about opposing candidates or parties. Negative campaigning is thus conducted to pick up on the mistakes and weaknesses of political opponents and capitalize on them - i.e. the election campaign is conducted with these - supposed - weaknesses of the political competitor instead of focusing on one's strengths or qualities. The opposite strategy would be that of positive campaigning, in which parties engage in acclamation or self-evaluation to appear more desirable than their opponents (Schmücking 2015; Budesheim, Houston, and DePaola 1996; Lau, Sigelman, and Rovner 2007; Westen 2008; Budge and Farlie 1983; Benoit et al. 2003).

Recently, numerous studies have been conducted that examine the incidence of negative campaigning (Benoit et al. 2003; Geer 2008), its effects on political trust, voter turnout, and the political system (Freedman and Goldstein 1999; Lau, Sigelman, and Rovner 2007), and the strategic choices associated with it (Damore 2002; Hale, Fox, and

Farmer 1996; Ridout and Holland 2010). Theoretical contributions to the situations under which parties resort to negative campaigning strategies have been developed primarily in the context of the United States (US) two-party system (Geer 2008). As a result, and because of the absence concerning social media, theories of negative campaigning on social media sites are still somewhat limited in scope. Studies of campaigning conducted on social media sites are needed to come to an understanding of this phenomenon.

This article attempts to fill the research gap by examining which formats Austria's political parties chose to use in the 2019 National Council election campaign on the social media sites Facebook and Twitter, and which party characteristics explain the use of negative campaigning in Austria. Since the study is conducted in the form of a full survey, it can statistically examine differences between parties. This study contributes to the topic of negative campaigning on social media sites in several ways:

- First, this study contributes to the development of a general theory of negative campaigning on social media by empirically testing the hypotheses put forth.
- Second, this study makes a theoretical contribution by examining the extent to which party orientation can influence the decision to engage in negative campaigning.
- Third, this study contributes by presenting new data on the negative campaigning of national political parties in the 2019 National Council election campaign on social media sites.

The structure of this article is as follows. First, an overview of the existing literature is presented. Second, hypotheses are developed about how political party characteristics and contextual electoral characteristics might influence a party's decision to use negative campaigning. Next, case selection, data collection, and analysis are discussed. Finally, the results of the empirical analysis are presented, conclusions are drawn, and several avenues for future research are suggested.

PARTY CHARACTERISTICS AND NEGATIVE CAMPAIGNING

In the field of negative campaigning, a considerable amount of work has been devoted to understanding the strategic dilemmas surrounding the use of negative campaigning (Hale, Fox, and Farmer 1996; Sigelman and Buell Jr 2003; Skaperdas and Grofman 1995). The risks of going negative are known as 'boomerang effects'. Candidates or parties that attempt to reduce the positive feelings voters have about an opponent run the risk that these attacks will generate negative feelings toward the attacker rather than the target (Garramone 1984; Johnson-Cartee and Copeland 2013). In this context, Hibbs (1977) has noted that the respective demands of the electorate (or the voters behind the parties) significantly influence what the parties do and do not do.

Theoretically, candidates or parties are expected to make use of negative campaigning only when the expected benefits (i.e., voter support) outweigh the potential risks (voter rejection). In general, research suggests that candidates use social media to craft beneficial campaign narratives, communicate with and mobilize voters, and build credible reputations. The above research confirms that attention to some forms of social media can influence candidate evaluations; however, there is still little evidence on what content is most important on these social media sites. More recently, researchers have begun to examine photos and images posted on candidates' social media platforms. Page and Duffy (2018) tracked the images posted on the Twitter and Facebook feeds of the 2012 Republican presidential candidates and found that the visual social media strategies of the four remaining candidates (i.e., Santorum, Gingrich, Paul, and Romney) differed greatly, but all attempted to convey credibility concepts such as trustworthiness and expertise with visual storytelling.

In the 2016 US presidential campaign, it was noted that not only had the number of posts increased substantially from 2012, but the number of images or videos had also increased (Hendricks and Schill 2017; Allcott and Gentzkow 2017; Enli 2017; Smith and Duggan 2012; Towner 2017). If one follows Auter (Auter and Fine 2016) but also Stier (2018). Negative campaigning takes place predominantly on Twitter. The question of the orientation of parties that primarily rely on negative campaigning has been explored by Immerzeel and Pickup (2015), who found in their paper 'Populist radical right parties mobilizing 'the people'?' that negative campaigning is more likely to be used by right-wing parties than by left-wing parties (Immerzeel and Pickup 2015). Walter and Van der Brug (2013a) demonstrated that liberal parties engage in negative campaigning more often than 'green parties' (Walter and van der Brug 2013a).

The literature points to two-party characteristics that influence the likelihood that parties resort to the use of negative campaigning. These can also be applied to an Austrian context, where parties rather than candidates are the main actors.

First, the party's government status affects its propensity to use negative campaigning. Parties that do not hold office are more likely to use this campaign strategy because opposition parties need to make clear to voters why they should be in the office and governing parties should not (Hale, Fox, and Farmer 1996; Kahn and Kenney 2004). Governing parties have a natural advantage over opposition parties; they can promote themselves and their program through their official position and duties (Lau, Sigelman, and Rovner 2007). Moreover, because of their position, governing parties usually receive more media coverage and therefore benefit from name recognition and an established reputation (Kaid and Holtz-Bacha 2006). Finally, compared to governing parties, opposition parties are not in the office and therefore have less to lose and more to gain by speaking negatively. Walter and Van der Brug (2013b) argue that whether parties engage in negative campaigning in a multiparty system depends in part on their coalition potential. Parties with low coalition potential

have little to lose from negative campaigning, as their chances of being part of the government are slim to none from the start. Such parties will be more willing to take the risks involved than parties with high coalition potential. They test whether several indicators of a party's coalition potential derived from the literature on coalition formation are related to a party's decision to make use of negative campaigning.

The 2019 National Council election campaign certainly holds an exceptional position because, first, it was conducted on a large scale on social media sites (Zmolnig et al. 2019; Atzmüller 2019), and second, an independent expert government was in power at the time of the campaign (Beham 2019). Based on this situation, the following hypotheses can be derived.

HYPOTHESES

Hypothesis 1: Twitter will be used more frequently for negative campaigning than Facebook.

Hypothesis 2: Images will be used more often for negative campaigning than videos.

Hypothesis 3: Small parties like 'Jetzt' use negative campaigning more often than large parties like the Austrian People's Party (ÖVP).

Hypothesis 4: Right-wing parties like the FPÖ use negative campaigning more often than left-wing parties like the SPÖ.

Hypothesis 5: Liberal parties like 'Neos' use negative campaigning more often than green parties.

Hypothesis 6: The more postings a party makes, the more often negative campaigning is used.

Hypothesis 7: Negative campaigning is not as popular with potential voters as general postings.

CASE SELECTION, DATA, AND CODING PROCEDURES

This article examines negative campaigning on social media sites in the context of the 2019 National Council election campaign in Austria. Austria is a developed democracy with a parliamentary system. For this reason, election campaigns in Austria are party-centric, unlike in the United States. Data collection is limited to national political parties that were represented in the National Council during the legislative

period 26, as well as 'Die Grünen'. 'Die Grünen' is, therefore, part of the analysis since it could be assumed that they would enter the National Council again. The analysis was conducted as a full survey - i.e., all posts published in the period between August 1, 2019, and September 22, 2019, and identified according to defined content and formal relevance criteria were included in the analysis.

Relevant is the social media sites 'Facebook' and 'Twitter' and in these channels than those postings that just have a relevant author: Relevant authors are the first or second-ranked of ÖVP, SPÖ, FPÖ, 'Neos', 'Die Grünen' and 'Jetzt' as well as the respective party accounts. A post in another social media channel or by another author - but with the same content or text - is considered a new, independent post. As a rule, independent postings are characterized by the name of the author, the date, the time, and at least one text. A posting can also contain a photo or a video. All coding decisions have to be made based on the textual, auditory as well as visual information in the posting - this information is of equal importance in each case.

The coding method is very similar to Geer's coding approach (2006). The unit of analysis is the disparagement of the opponent, i.e. evaluative understanding was used. The content analysis was conducted by native-speaking proponents. Geer's coding method (2006) proved to be reliable. Intercoder reliability was measured by coding a random sample of appeals. The most difficult coding category was determining the unit of analysis, i.e., what is a demotion and what is not. The intercoder reliability (Krippendorf's alpha) is .84 for a unit of analysis selection. For tone (negative versus general), Krippendorf's alpha is .97. In total, coders selected 6252 posts on the parties' social media pages.

RESULTS

The analysis showed that during the 2019 National Council election campaign, a total of 6252 postings were made by the parties studied or their top candidates, with Facebook accounting for 3430 postings and Twitter for 2822 - 835 postings contained disparaging remarks and were therefore marked as 'negative campaigning': 373 of these on Facebook and 462 on Twitter. Hypothesis 1 assumes that Twitter is more likely to be used for negative campaigning than Facebook. So here the direction is negative. At 95 percent of the significance level, the significance value is 0. So we accept the null hypothesis (Null Hypothesis - Both samples are from the same population). From the analysis performed, we cannot find any statistical difference between the use of negative campaigning on social media sites such as Facebook and Twitter.

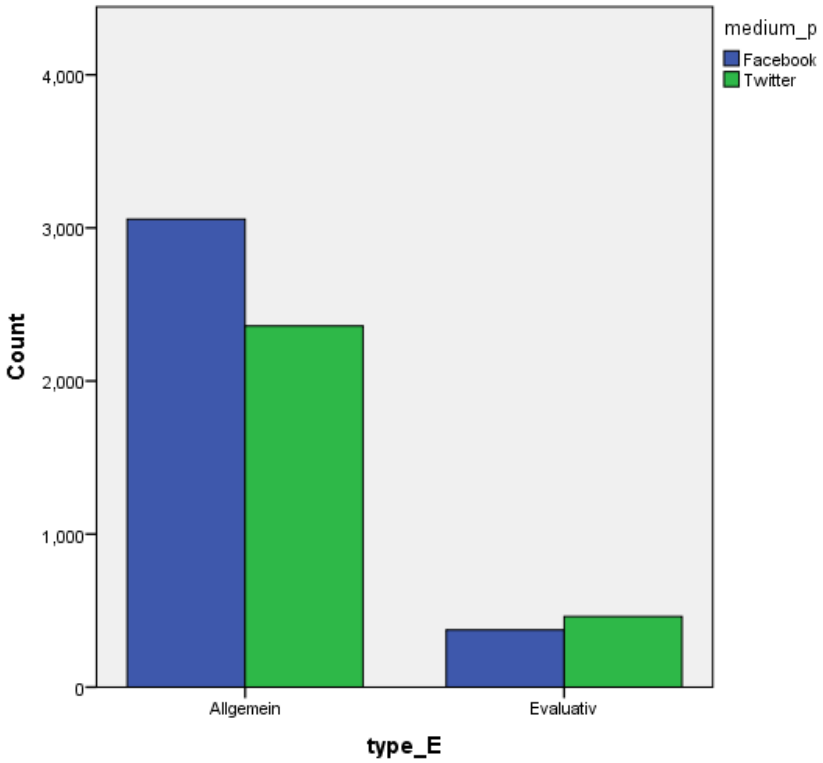


Figure 1. Number of Posts Regular/Negative Campaigning

Group Statistics

	medium_p	N	Mean	Std. Deviation	Std. Error Mean
type_E	Facebook	3430	.11	.311	.005
	Twitter	2822	.16	.370	.007

Figure 2. Statistic Facebook/Twitter Posts Mean/Std. Deviation

Of the 6252 posts, 16 posts were tagged with image, 3182 were tagged with image/text, 1324 were tagged with text, 4 were tagged with video, and 1726 were tagged with video/text.

Descriptives

type_E

		N	Mean	Std. Deviation	Std. Error	95% Confidence Interval for Mean		Minimum	Maximum	Between-Component Variance
						Lower Bound	Upper Bound			
Bild		16	.13	.342	.085	-.06	.31	0	1	
Bild/Text		3182	.09	.292	.005	.08	.10	0	1	
Text		1324	.21	.411	.011	.19	.24	0	1	
Video		4	.00	.000	.000	.00	.00	0	0	
Video/Text		1726	.14	.352	.008	.13	.16	0	1	
Total		6252	.13	.340	.004	.13	.14	0	1	
Model	Fixed Effects			.337	.004	.13	.14			
	Random Effects				.037	.03	.24			.003

Figure 3. Number of Posts tagged with Text/Image/Video

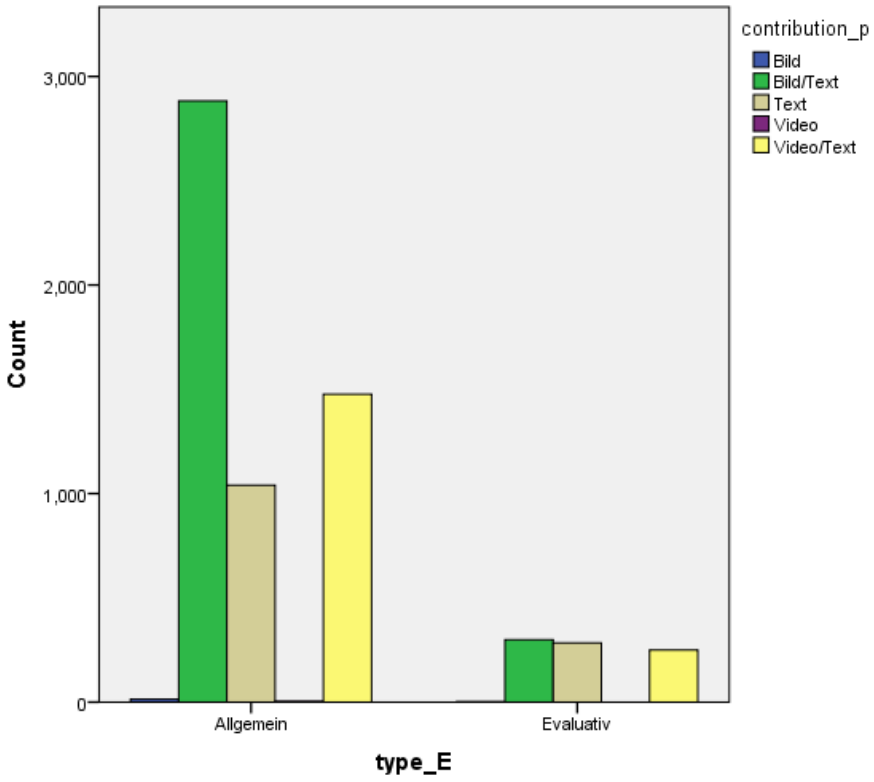


Figure 4. Number of Posts tagged with Image/Image Text/Text/Video - Splitted into Regular and Evaluative

Looking at the p-value, we can see that it is below the significance level. Thus, from the research results, images are used more often for negative campaigns than videos. In total, ÖVP has 956 postings, now has 316 postings on Facebook and Twitter:

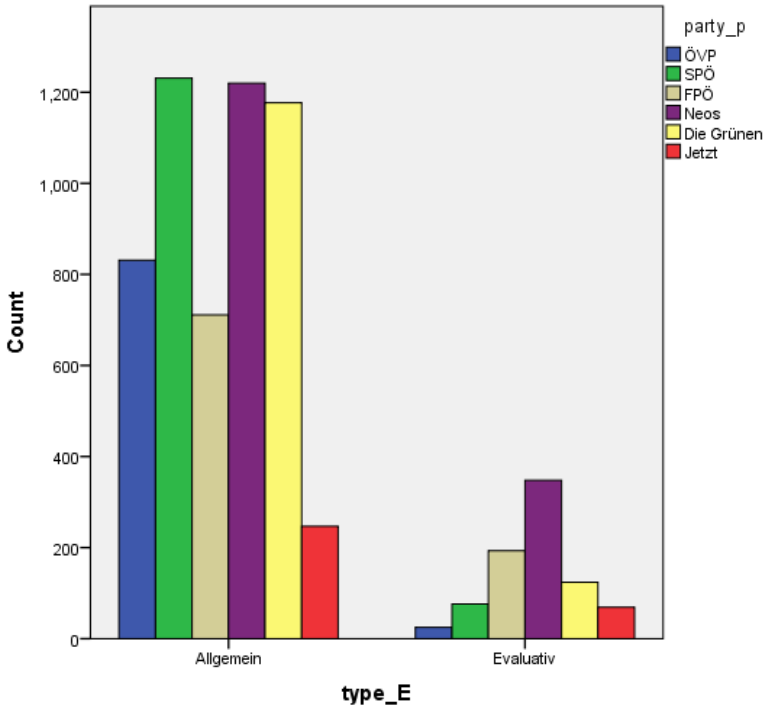


Figure 5. Number of Posts per Party - Splitted into Regular and Evaluative

From the findings, the table value of p is greater than the calculated significance level, thus it can be concluded that there is a statistical difference between the two groups, which means that small parties use negative campaigns more often than large parties. If we now check whether right-wing parties such as the FPÖ use negative campaigning more often than left-wing parties such as the SPÖ then we see that there is a significant difference between the groups and from this we can conclude that right-wing parties such as the FPÖ use negative campaigning more than left-wing parties such as the SPÖ. Do liberal parties ('Neos') use negative campaigning more often than green parties ('Die Grünen')? The analysis of the evaluation showed that the number of the negative campaigning of the liberals like 'Neos' is very high, much higher than all other parties.

Correlations

		type_E	level_1	level_2	level_3
type_E	Pearson Correlation	1	-.023	-.023	-.022
	Sig. (2-tailed)		.068	.073	.080
	N	6252	6252	6252	6252
level_1	Pearson Correlation	-.023	1	1.000**	.999**
	Sig. (2-tailed)	.068		.000	.000
	N	6252	6252	6252	6252
level_2	Pearson Correlation	-.023	1.000**	1	.999**
	Sig. (2-tailed)	.073	.000		.000
	N	6252	6252	6252	6252
level_3	Pearson Correlation	-.022	.999**	.999**	1
	Sig. (2-tailed)	.080	.000	.000	
	N	6252	6252	6252	6252

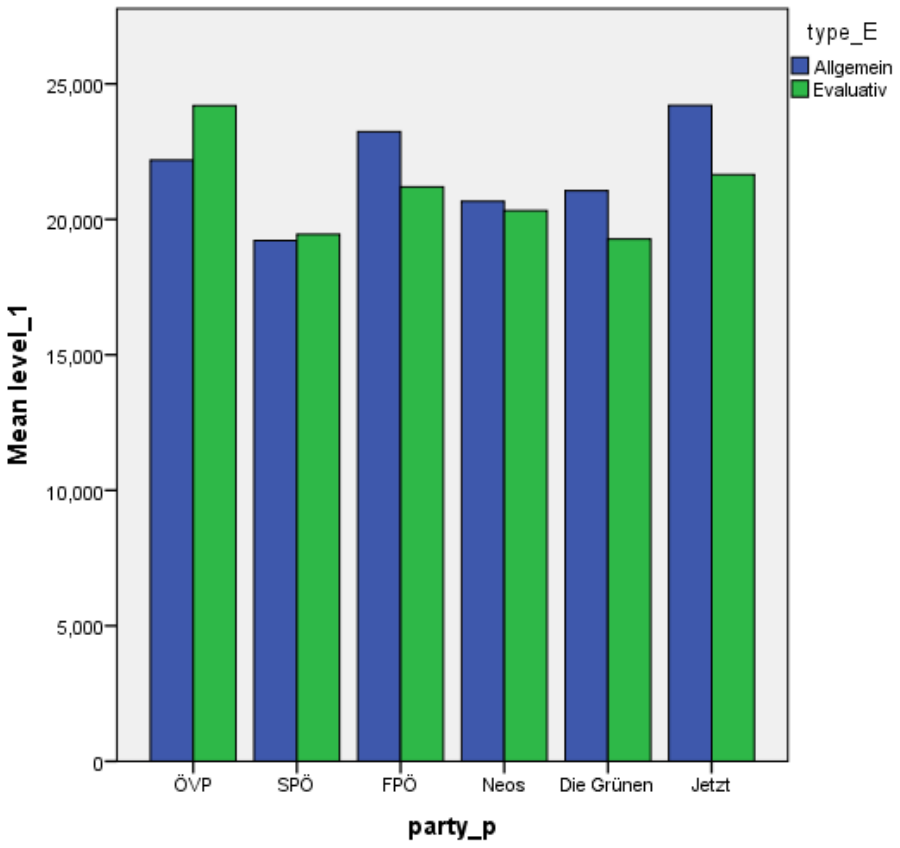
**. Correlation is significant at the 0.01 level (2-tailed).

Correlations

			type_E	level_1	level_2	level_3
Kendall's tau_b	type_E	Correlation Coefficient	1.000	-.027*	-.027*	-.027*
		Sig. (2-tailed)	.	.015	.013	.011
		N	6252	6252	6252	6252
	level_1	Correlation Coefficient	-.027*	1.000	.987**	.912**
		Sig. (2-tailed)	.015	.	.000	.000
		N	6252	6252	6252	6252
	level_2	Correlation Coefficient	-.027*	.987**	1.000	.924**
		Sig. (2-tailed)	.013	.000	.	.000
		N	6252	6252	6252	6252
	level_3	Correlation Coefficient	-.027*	.912**	.924**	1.000
		Sig. (2-tailed)	.011	.000	.000	.
		N	6252	6252	6252	6252
Spearman's rho	type_E	Correlation Coefficient	1.000	-.031*	-.032*	-.032*
		Sig. (2-tailed)	.	.015	.013	.011
		N	6252	6252	6252	6252
	level_1	Correlation Coefficient	-.031*	1.000	.998**	.968**
		Sig. (2-tailed)	.015	.	.000	.000
		N	6252	6252	6252	6252
	level_2	Correlation Coefficient	-.032*	.998**	1.000	.969**
		Sig. (2-tailed)	.013	.000	.	.000
		N	6252	6252	6252	6252
	level_3	Correlation Coefficient	-.032*	.968**	.969**	1.000
		Sig. (2-tailed)	.011	.000	.000	.
		N	6252	6252	6252	6252

*. Correlation is significant at the 0.05 level (2-tailed).

**. Correlation is significant at the 0.01 level (2-tailed).



If one follows Garramone then negative campaigning creates a so-called boomerang effect, i.e. that these attacks create negative feelings towards the attacker instead of the attacked (Garramone 1984). The analysis showed that the posts that were marked with negative campaigning received on average more likes than those posts that were not marked with negative campaigning. From this, we can conclude that Garramone's thesis is not valid - at least in this campaign - because users gave more approval to the disparaging postings.

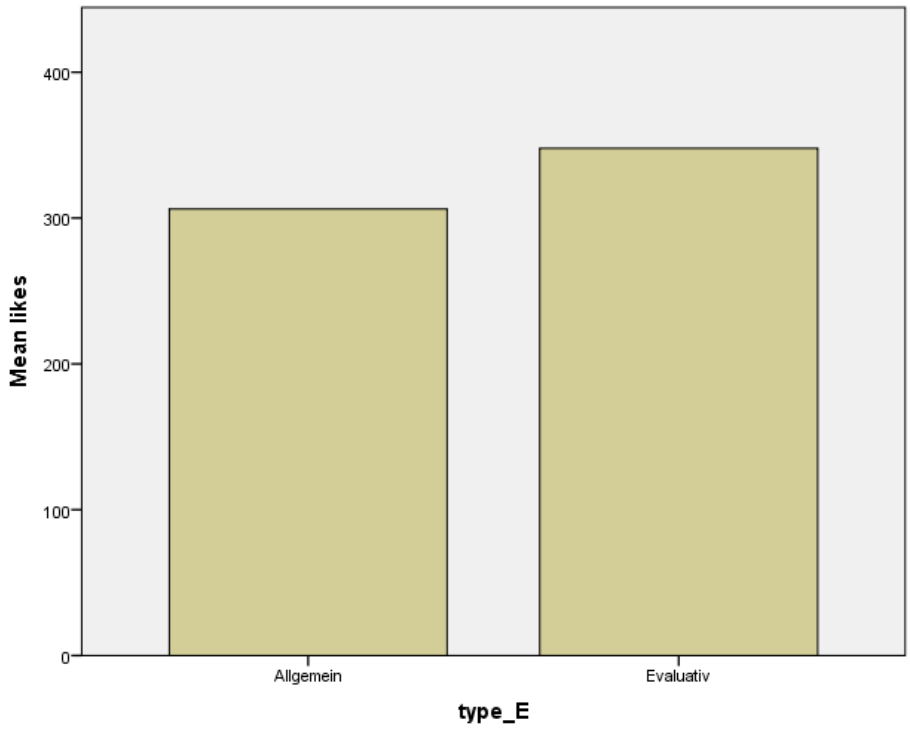


Figure 6. Mean Likes on both Social Media Pages

CONCLUSION

This article has added to our knowledge of negative campaigning on social media sites in several ways. First, it has contributed to the state of the research by being the first study of negative campaigning on social media sites to examine a large enough number of cases (N=6252) to test the use of negative campaigning by parties. This allowed us to test the extent to which theories developed, primarily in the US, are applicable beyond their context (Kahn and Kenney 2004; Lau and Pomper 2004).

Consistent with the work from the US, we find that smaller opposition parties are more likely to be negative in postings. Moreover, the results support the notion that we should consider indicators of coalition potential when studying negative campaigning in Austria (Walter 2014; Walter and van der Brug 2013a). We found that parties positioned further from the center and parties with less government experience are more likely to engage in negative campaigning, which is consistent with the notion that parties with less coalition potential engage more. Because there are both similarities and important differences across parties in the processes that lead to negative campaigning, further work in this area is urgently needed.

Second, this is the first study to examine the use of negative campaigning in Austrian election campaigns on social media sites and to test previously established theories for validity and attempt to establish a relationship between negative campaigning and voter approval on social media sites: The results suggest that - at least on social media sites - the parties' cost-benefit analysis may be turning towards Negative Campaigning, as the average popularity of negative campaigning posts was greater than those that were not tagged with negative campaigning.

Future research, apart from the findings in this paper, should therefore examine not only the social media sites or the type of posting, but more importantly the issues on which negative campaigning is used. This study is based on postings of the parties produced in the Austrian National Council election campaign 2019. They are therefore well suited to examine the number of postings with negative, derogatory content, but not to examine changes in campaign strategies throughout an election campaign. This study did not examine the significant effects of contextual variables. However, one must consider the possibility that contextual variables, such as the end of the campaign, affect the use of negative campaigning. Future research could test this.

This study only examines the Austrian National Council election campaign conducted on social media sites. This limits the ability to estimate the effects of system-level variables, such as the electoral system.

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THE CURRENT POSITION OF THE FOREIGN TERRORIST FIGHTERS IN THE REPUBLIC OF NORTH MACEDONIA

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Abstract: *Terrorism with religious ideological background today is a serious global threat. The modern infrastructure and the communications of movement allowed terrorist organizations to be able to attack everywhere in the world. The issue that is a point of interest of this paper is the current situation of returning the foreign terrorist fighters to their home country or third countries and the security consequences that may arise if they are not treated properly. For a more detailed perception of this problem through the case analysis – an operative police action related to the foreign terrorist fighters, the functional aspects of the criminal prosecution bodies of the Republic of North Macedonia will be better perceived and studied. Also, a special emphasis will be placed on the strategy for the fight against violent extremism and the financing of terrorist fighters.*

Keywords: *Foreign Terrorist Fighters; Terrorism; Radicalization; Violent Extremism*

INTRODUCTION

Along with the escalation of wars in the Near East, the emergence of foreign terrorist fighters became an important issue, which has led the countries around the world to face the problem when their citizens join these groups. The opposing of the emergence of 'the foreign terrorist fighters' and the violent extremism became a top priority of the international community which has contributed to changes and amendments to the existing legislation to initially resolve the issue with foreign fighters. The Resolutions 2170 (2014) and 2178 (2014) of the United Nations Security Council adopted according to Chapter VII from the UN Charter, concluded that the flow of foreign terrorist fighters was an "international threat to peace and security". As a result, the Resolutions oblige the countries to undertake wide measures to prevent and suppress this flow. Resolution 2396 of the UN Security Council (2017) calls for further actions in the areas of border security and the exchange of information, judicial measures, and co-operation, as well as strategies for prosecuting, rehabilitating, and reintegrating foreign terrorist fighters.

The extremist groups and their networks promote violent extremism by different methods. Their continuous existence relies on recruiting others for their cause. The violent extremist groups get new supporters and as a result of individual perception of injustice and need for a form of political activism. They join to meet their socio-cultural needs related to the identity issue. They are looking for an essence, which in a form of ideology is purposely produced by the extremist (terrorist) groups. Some individuals join for personal achievement and advancement, which leads to access to the organized criminal groups and improved incomes etc. (Talking Extremism 2012). The phenomenon of the foreign terrorist fighters is closely related to the increase in the execution of the acts by the terrorists operating alone or in small cells. They can be a significant threat when returning to their home countries, but also the threat comes from people who haven't provided resources for traveling and take part in the wars in the Near East or were prevented from traveling by the security services. The inability of travelling to Syria, Iraq, or other countries makes them frustrated and more vulnerable to attack in their home countries. The involvement of several foreign fighters in the terrorist attacks in Brussels, Paris, London, and Istanbul from 2015 to 2017 just confirmed the risk and the danger of the countries from these people.

LEGAL PROVISIONS RELATED TO FOREIGN TERRORIST FIGHTERS

In the Republic of North Macedonia, special attention is paid to terrorism and the fight against it. From 1996, under the Criminal Code, the criminal offense of terrorist endangerment of the constitutional order and security has been prescribed (Dimovski and Ilijevski 2011, 35). Furthermore, in 2004 another act was established - a terrorist

organization, and in 2008 two more acts - terrorism and financing of terrorism. Also, since 1996, the crime of 'international terrorism' has been established. Specific to these crimes is that in the previous period their content was directed to several changes stating their essence and prescribing stricter sanctions, and in 2009 they became subject to prolonged confiscation (Krstevska 2017, 254).

Because of the new forms of terrorist acts and the spreading of the phenomenon of radicalization and violent extremism in September 2014, the Macedonian Assembly adopted changes in the Criminal Code that sanction the recruitment, the training, the agitating, the logistics, the financing, and the participation of people in War conflicts outside the country and in foreign paramilitaries and terrorist organizations. The revised legislation introduced a new criminal act 'Participating in foreign military, police, paramilitary or parapolice formations' to prosecute the Macedonian citizens who have in different ways participated in the paramilitary terrorist organization in Iraq and Syria. According to the amendments of the Law, participation, recruitment, training, agitation, logistics, and financing are criminal offenses for which minimum sentences of four or five years in prison are provided. The minimal prison sentence of five years is provided for the direct participants in the war conflicts, their instructors, the financiers, and the logisticians. One year less is the minimum sentence for people who recruit or encourage or call for participation through tests, speeches, and promotion on social networks.

From the variety of criminal acts of the Criminal Code of the Republic of North Macedonia is recognized the effort of the Macedonian criminal legalization to proceed and implement all international efforts to combat terrorism at the national and international level. From a normative point of view, the framework of the number and type of criminal offenses is solid, but that is not a guarantee that in the application of these provisions there are no dilemmas in terms of the application of substantive law.

RADICALIZATION

Radicalization is a dynamic process that is not a threat to society if it is not related to violence or other illegal acts. Radicalization can occur in many different circumstances in different ways and at different speeds. Every case of terrorist radicalization and recruitment for terrorism is a result of a unique intersection of the environment with the personal circumstances and the psychology of the people (Preventing Terrorism, OSCE 2014, 35). Radicalization is seen as a process when a person increasingly accepts the use of violence to achieve certain political, ideological, or religious goals. The process of radicalization that results in violent extremism is characterized by (Action plan 2014):

- Cognitive development towards a stable one-sided perception of the reality, where there is no space for alternative perspectives;

- Further development where the perception of the reality is experienced so acutely and seriously that violent action seems necessary and just.

Having in mind the basic characteristics of terrorist recruitment and acting with all their complexities, certain terrorist activities would be possible only if their internal organization has a built-in policy of radicalization of membership and recruits. It stems from the use of political and cultural violence where such a strategy can only be fulfilled by a radicalized 'fighter'. The modern analysis of terrorism pays great attention to the phenomenon of radicalization which is closely related to the recruitment process (Fatic 2014, 214).

With the advancement of technology or the development of internet communication and propaganda techniques, the possibility for faster and simpler contact of extremists with the targeted population has increased and facilitated. In the past two decades, the Internet became a necessary tool in the extremists' strategy. In this regard, it can be mentioned that radicalization and recruitment are done through social networks and other internet applications (Balkan Jihadists 2016, 28). Cases of self-radicalization through access and use of extremist internet channels are familiar as well as ones through the written literature.

The internet propaganda of the extremists is also present in the Republic of North Macedonia where the Islamic radicals use the Internet to publish religious content and contacts with like-minded people from the country and abroad (KCSS 2018, 35). The radicalization and the setting of direct contact with the notorious terrorist organization ISIS through propaganda sites and social channels on the internet are outside of mosques or improvised religious objects. With the help of technology those who radicalize don't have to be physically present in the Republic of North Macedonia. In North Macedonia, due to the inconsistent application of the legal norms and sanctioning of electronic media, internet radicalization finds a suitable ground and is a dangerous tool for radicalization and recruitment of future terrorists.

PROFILE OF A FOREIGN TERRORIST FIGHTER

The researches have shown that there is no single and unified profile of a foreign terrorist fighter or all the assumptions in the creation of a profile have proven wrong (Guidelines OSCE/ODIHR 2018, 14). Most of the studies on this topic analyze the motivation and the factors because of which the foreign fighters decide to go on the battlefields. Many foreign terrorist fighters suffer from antisocial psychological disorders manifested by low patience control, problems with stress and anger management, aggression, and violence in social relations. According to the Counterterrorism Strategy of the Republic of North Macedonia, the profiles built based on stereotypical assumptions based on religion, ethnicity, race, gender, socio-economic status, etc. are

not only discriminating but at the same time, they are inefficient, with a risk to encourage the spread of the violent extremism and terrorism. For these reasons, it is stated that the identification of terrorism with any nationality, religion, or ethnicity should be rejected. Even though there is no unique profile of a typical foreign terrorist fighter from the Western Balkans, the individuals who have left have general common characteristics like relations with the Diaspora in the EU (especially in Austria and Germany) and criminal past before their leaving. Other common characteristics of foreign terrorist fighters are the low educational level, unemployment, dysfunctional or broken families as well as mental problems. The Strategy emphasizes that the most probable rivers of the threat from the phenomenon of foreign terrorist fighters, or factors that influence and 'move forward' the terrorists are the economic; social and ideological factors (National Strategy 2018, 12-28).

The main reasons for the departure of the people are the economic reasons, i.e. these families have had very modest financial incomes or have received social help, another reason is the low educational level, and an interesting point is that a motive for their indoctrination can be some tragic events in their personal life, personal crisis, etc. In the part of the factors (the pull factors) that pull them are empathy and the feeling of belonging to a certain group, i.e. they show solidarity with the people who are there and what is happening to them. It can be concluded that the foreign terrorist fighters, i.e. many of them, knowingly left the battlefields in Syria and Iraq, i.e. that solidarity is one of the main reasons why they left (NEXUS 2020, 8).

If the basic features and characteristics of the convicts for participation in foreign army, police, and paramilitary or parapolice formations in the Republic of North Macedonia are analyzed, it can be concluded the diversity of their profiles (Analytica 2018, 25). The fact that among the convicts there is a journalist, a doctor, a civil servant, a jeweler, a taxi driver, etc. some of them are young and some of them are older, it is wrong to make stereotypes about a certain category of people.

FINANCING FOREIGN TERRORIST FIGHTERS

An important stage in the planning and realization of the terrorist activities is the providing of financial resources for implementation and dissemination of their ideology, as well as for the maintenance of the terrorist organizations themselves. They strive to achieve maximum results through minimal spending of their resources.

How terrorist organizations provide finances is dynamic and can change fast. At the moment it is assumed that the finances given to the foreign fighters for joining the terrorist organizations are insignificant, but they are still an important source of financing. The terrorist organizations are financing the trip, the daily living expenses, the training, and the equipment of the foreign terrorist fighters (Barrett 2017, 45).

Some of the foreign fighters raise money to travel to their mother country; others are helped by funds and donations from the Diaspora. Those who cover their costs for joining a terrorist organization by themselves get a refund at their final destination.

Due to the actuality of the problem and the development of the phenomena of foreign terrorist fighters the countries are forced to consider the existing mechanisms for prevention of the financing of terrorism, as well as to introduce new specially designed mechanisms that will hinder and disrupt the financial support of the foreign fighters. The analysis of the bank accounts, the debts, and then transfers to foreign terrorist fighters is of great importance (RAN Manual 2017, 28).

Some of the countries in the world in addition to criminalizing the financing of terrorism also introduce in their legislation the financing for the travel of foreign terrorist fighters for terrorism and the receipt of terrorist training. In that direction, the rapid exchange of information between the countries and the use of the membership in the Egmont Group, the Interpol relations, the memoranda of cooperation, and the bilateral exchange of information are immeasurable.

The Republic of North Macedonia in 2019 adopted the necessary bylaws of the Law on Restrictive Measures, including the Rulebook on the form and the content of records for implemented financial measures, including financial measures against terrorism and proliferation, Decision on establishing a coordinating body to monitor the implementation of the restrictive measures and the Rulebook on the form, content, and manner of keeping the list of certain persons to whom financial measures against terrorism and spreading (dissemination) of weapons for mass destruction and their financing have been introduced (FIU 2018). To effectively implement the National Strategy for Combating Terrorism as well as the National Strategy for Combating Money Laundering and Financing of Terrorism, the Financial Intelligence Unit in cooperation with the National Coordinator for Prevention of Violent Extremism and Counter-Terrorism has prepared a handbook on the non-profit sector exposure of the terrorist financing. In 2019, the Financial Intelligence Unit received notifications of six suspicious transactions for financing terrorism and submitted them to the competent institutions for further processing (Country Reports on Terrorism 2019, 93).

STRATEGY FOR PREVENTING VIOLENT EXTREMISM

To better respond to the complexity of the fight against terrorism and extremism, the Macedonian authorities in 2017 established a National Committee for preventing violent extremism and fight against terrorism. This concept opens a new chapter in the fight against terrorism and violent extremism in the Republic of North Macedonia where the emphasis is placed on the need for greater coordination and involvement of all institutions in the system. This body has a goal to increase the efficiency and the coordination of the institutions and their activities in direction of more successful and

more efficient dealing and prevention from violent extremism and terrorism. As a result of this collaboration is planned better monitoring and evaluation of the activities envisaged in the National Action Plan in the area of prevention and dealing with violent extremism in the Republic of North Macedonia.

The strategies are focused on the measures for combating violent extremism and terrorism from an aspect of prevention, defense, protection of citizens and property, criminal prosecution, remediation of the consequences of a terrorist attack, coordination, and national and international cooperation. The commitment of the Republic of North Macedonia is reflected in the monitoring of the plans, concepts, and policies of the EU and NATO, as well as compliance with the resolutions and framework conventions on terrorism, the Council of Europe, as well as regional initiatives.

The National Committee for Prevention of the Violent Extremism and the Fight against Terrorism, in co-operation with the OSCE, has recently organized a series of roundtables across the country to raise awareness of national counter-terrorism strategies and counter-violence extremism and affirmation of action plans. Also, in cooperation with international donors, the National Committee for the Prevention of Violent Extremism and the Fight against Terrorism has supported several projects aimed at recognizing the 'early signs of radicalization and building community resistance to terrorist ideas' through training and engaging young people, parents, educators, and law enforcement officers.

CASE ANALYSIS: ANTI-TERRORIST OPERATIVE ACTION 'CELL'

The operation 'Cell'[1] is the first realized criminal-operational action of the Macedonian security organs for the crime of participation in a foreign army, police, paramilitary, and parapolice formations provided and punishable under Article 322-a of the Criminal Code of the Republic of North Macedonia. The action involved several dozen people, some of whom were found in the country, some were inaccessible to law enforcement agencies, and some, according to the information, were still active fighters in Syria and Iraq. Following the searches and the arrests, trials were conducted in which 25 people were convicted.

The first action 'Cell' started on 06.08.2015 when after receiving orders from a judge in a preliminary procedure, a total of 28 searches were conducted, of which 21 searches of homes and other premises in Skopje, 4 in Gostivar, and one each in Tetovo, Kumanovo, and Struga, with a total of 24 individuals and 4 facilities.

[1] Macedonian media that were reporting on the case and were accessed for data and information taking: www.mrt.com.mk, www.telma.com.mk, www.24.mk, www.tv21.tv, www.alsat-m.tv, www.a1on.mk, www.kanal5.com.mk, www.sitel.com.mk, www.alfa.mk, www.vecer.mk, www.denesen.mk, www.novamakedonija.com.mk, www.slobodnaevropa.mk, www.dw.com, www.mk.voanews.com, www.makfax.com.mk, www.plusinfo.mk, www.vesti.mk.

The four facilities included an internet cafe in Skopje, the ancillary facilities of the Tutunsuz Mosque, as well as the premises of two non-governmental organizations. During the operation, 9 people were secured, and another 27 who were covered by the investigation continued to be looked for. During the undertaken measures and activities about the conducted searches, with confirmation for confiscated items, were confiscated: 38 desktops, 18 laptops, 18 tablets, 119 mobile phones, 77 SIM cards, 65 SIM card holders, 6 hard drives, 45 USB sticks, 35 memory cards, one pistol, tactical vest with waist and holster, cash (2,870 euros and 900 dollars), 3 travel documents, 114 CDs, Western Union Certificates, 2 boxers, 3 cameras, 3 cameras, MP3 player and two voice recorders. The confiscated items were handed over to the Department of Forensic Technical Investigations and Expertise for their further processing and expertise to find additional evidence related to the crime.

The second police action 'Cell 2' was conducted on 09.07.2016 as a continuation of the first action in which searches were conducted at 7 locations in Skopje and Tetovo and 5 desktops, 2 laptops, 19 mobile phones, 9 SIM cards were found. , SIM card holder, 9 USB sticks, 50 CDs, memory cards, a protective mask, 3 travel documents, a T-shirt with the inscription in Arabic 'Islamic State is eternal'. Four people from Tetovo were caught. Three suspects were not available at that time, for two persons from Skopje and Kumanovo there was operational information that they were in Syria at that time, and the third person from the village of Arachinovo according to the operational information was in Skopje.

The police operation 'Cell 3' was conducted on 12.08.2016 in cooperation with the security services of the Republic of Turkey, where five Macedonian citizens were detained in the Turkish settlement of Aksaray on suspicion of being members of the Islamic State, i.e. they intended to join them. Namely, according to the information, the persons were previously radicalized, encouraged, and organized by Macedonian citizens-jihadists who stayed in Syria for a long time. The suspects left the Republic of North Macedonia and went to Turkey with the sole ultimate goal of joining the paramilitary mujahedeen units in Syria. Shortly afterward, they were extradited to our country, and criminal charges were filed against them.

In August 2018, seven more Macedonian citizens were arrested, for whom an international arrest warrant has already been issued for participation in foreign armies, but also after previously filed criminal charges within the police actions 'Cell 1' and 'Cell 2' from 2016.

The 'Cell' operation is another indicator that the institutions of the Republic of North Macedonia have the capacity and the credibility to deal with the current security challenges and are a serious partner in the Global Coalition to Combat Terrorism. The result of these police actions was obvious in the direction of a drastic decrease in the number of Macedonian citizens who joined ISIS or other formations in Syria and Iraq.

However, this does not mean that extremist ideas, the process of radicalization, and the threat of committing terrorist acts have disappeared from the Republic of North Macedonia. This is confirmed by the two police actions in 2020 in which a terrorist group in the Republic of North Macedonia composed of foreign fighters was suppressed.

The first action was realized on 01.09.2020 when the Sector for Fight against Terrorism, Violent Extremism, and Radicalism at the Ministry of Interior filed criminal charges against 3 people from Kumanovo. Searches were conducted at four locations in Skopje and Kumanovo and there were found 5 automatic rifles, a machine gun, 18 frames for an automatic rifle with 30 bullets, a frame with 15 bullets, 3 wooden butts, a wooden butt with a firing mechanism, 3 grenade launchers were found. RD 40mm, 5 grenade launchers for hand grenade launcher with fuses, 2 camouflage caps, 2 black and gray undercoats, 2 pairs of camouflage gloves, 2 tactical vests, 4 tactical vests in camouflage color, flag with written Arabic letters (ISIS), scarf with written Arabic letters.

The second action was carried out on 27.12.2020 in which 8 people from Skopje and Kumanovo were detained. 8 locations were searched where military equipment and weapons were found. The terrorists communicated with each other on the Internet application 'Watts Up' where they have agreed on how to transport the weapons and also agreed on how to make suicide belts. The Ministry of Interior informed that the terrorist cell planned a series of attacks on public buildings, liquidations, but also suicide attacks to cause as much panic and fear among the citizens as possible.

CONCLUSION

Violent extremism and terrorism as a global phenomenon still is a big threat to society, and the process of radicalization in different social settings is a reality that will continue to be a factor for new terrorist attacks.

Even though, all countries have adopted and are conducting the measures for punishing the foreign fighters they are still aware that the repression and the punishment are not always equated with awareness and repentance. Such measures may have an opposite effect and do further radicalization and realization of the terrorists' goals. The repressive approach ignores the issue of reintegration of the person into society. Closing or monitoring the movement of the foreign terrorist fighters is not enough to address the roots of this problem and therefore such measures may yield short-term results. For a long time, the countries of Europe should focus on accelerated development to create effective strategies to reduce the number of recruits - jihadists and in general the ideas of violent extremism and terrorism. By fundamentally understanding the motive for joining terrorist organizations and radicalization in general as a process, and most importantly the circumstances and conditions that enable it, countermeasures against violent extremist ideology are more likely to be used.

According to the National Strategies for Prevention of Violent Extremism and Counter-Terrorism, the Republic of North Macedonia implements programs for de-radicalization of the foreign terrorist fighters in prisons, undertakes activities to increase the awareness of the risk and threats of terrorism, and strengthens the mechanisms for prevention of radicalization at the local level. To this end, the whole society must be involved in increasing the awareness of radicalization in the community and in building internal capacities to oppose it.

Here are some recommendations:

- developing a specific policy for foreign terrorist fighters in the overall framework for the fight against terrorism;
- designing an instrument for assessing the risk of repatriated foreign terrorist fighters and supporting research in this area;
- providing appropriate medical assistance to the traumatized returnee foreign terrorist fighters;
- increased attention to returnee children from conflict regions; and
- development of mechanisms and activities in the field of social reintegration.

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THE COVID-19 MOBILITY IMPACTS ON THE MIGRATION FLOW IN SOUTH-EAST EUROPE: THE SITUATION IN 2021 AND BEFORE 1989

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Abstract: *In this paper, we analyze the current travel restrictions due to the COVID-19 pandemic imposed by the countries from South-East Europe and briefly compare them with those imposed by the Central European countries. By using official data collection of displacement tracking matrices and analyzing the porosity of the borders in this part of Europe, we research the impact of COVID-19 on human mobility and the related economic and social aspects. Discussions are presented regarding this impact on the travelers, the seasonal workers from some of the selected countries, and the immigrants from the Middle-East. A formal analysis is performed relating the current travel restrictions and the travel ban during the iron curtain.*

Keywords: *COVID-19 Pandemic; South-East Europe; Travel Restrictions; Borders; Immigration; Iron Curtain*

INTRODUCTION

Migrants are playing an important role in the contemporary economic and social sectors. On the other side, they belong to the most vulnerable population group under the COVID-19 pandemic. According to the International Organization for Migration (IOM), in November 2020, emigrants from the twenty countries with the highest number of COVID-19 cases accounted for nearly 28% of the total international migrants (WMR 2020). They contributed to 37% of the global amount of remittances sent to their home countries in 2019(World Bank 2020).

Nowadays, 13% of all key workers in the European Union (EU) are immigrants (Fasani 2020). Among them, there are five largest category groups formed by teaching professionals, skilled agricultural workers, science and engineering associate professionals, personal care workers, and people working in the field of cleanliness (Migration Data Portal 2020).

In general, the majority of the immigrants are exposed to higher risks as a high percentage of them are working in critical sectors of healthcare services and even more in the countries with the highest number of COVID-19 cases (OECD 2019). For example, in the UK, the percentage of foreign-born doctors and nurses in the period 2015-2016 was 33% and 22% respectively. Similar is the situation in the service sector, also known for its high risk due to physical contacts. According to Migration Data Portal (2020), during the same period 2015-2016, more than 13% of all services and sales workers in seven of the twenties countries with the highest number of COVID-19 cases were foreign-born. More than 9% of the agricultural, forestry, and fishery workers in five of these countries were also foreign-born. Additionally, in 2013, about 11.5 million immigrants were employed as domestic workers globally and approximately 8.5 million of them were female (ILO 2015). Due to the border closures and economic measures, the majority of them could not return to their home countries and thus they have been forced to live without any income. Similar was the situation of many immigrants, including students and seasonal workers who were not able to return. According to IOM's Return Task Force, in July 2020, there were at least 3 million stranded migrants globally (IOM 2020).

Travel restrictions increased rapidly after the beginning of the pandemic in February 2020. Their percentage in May-June 2020 was almost 75%, while in January 2021 they have decreased up to 43%. Additional displacement track matrices have been reported every week due to the very dynamic situation under pandemic measures (MTI 2020; HMI 2021; TRM 2021).

Countries with large numbers of citizens working abroad in the EU, like Romania and Bulgaria, anticipated massive repatriations of nationals (Paul 2020). According to Mantu (2020), the Covid-19 related measures adopted in the destination countries of Romanian immigrants such as Italy, Spain, Germany, France, and the UK, had a large

impact. In March 2020, Romanian authorities started to repatriate Romanians as many of them have lost their jobs and had no financial means to return home. Until May 2020, about 1,279,000 Romanians had returned. About 300,000–350,000 of them were starting to look for a job in Romania and the rest had the intention to immigrate again if possible.

Similar is the situation regarding the Bulgarian immigrants. Several thousand returned to Bulgaria and applied for a job (The Economist 2021). Social media interviews with returnees showed that the most popular reason for return was to stay with family and relatives, followed by loss of employment. Around 19% of the interviewed who had been living abroad for more than a year, said that they did not want to return to Western Europe, while 47% were undecided (Foreign Policy 2020). This return has led to an increase in unemployment from 6.2% in February 2020 to 6.5% a month later (BRM 2020; BMWSP 2020).

In this paper, we analyze the COVID-19 impact on mobility in South-East Europe, by comparing the border restrictions between Romania, Bulgaria, Serbia, North Macedonia, Montenegro, Bosnia, and Herzegovina, and Croatia established on 25 January 2021. These travel restrictions are compared to those imposed by the Central European countries and to the restrictions before 1989 when Romania and Bulgaria belonged to the ex-socialist bloc and the rest of the countries, to ex-Yugoslavia.

TRAVEL RESTRICTIONS DUE TO THE COVID-19 PANDEMIC IN SOUTH-EAST EUROPE

A large data collection offered by IOM and focused on the Human Mobility Impact (HMI 2021) and displacement tracking matrices for each country allow researching the impact of COVID-19 on human mobility. According to these data, the situation in South-East Europe on 25 January 2021 shows relatively porous borders with several open border crossings points, entry restrictions border crossings points, and a few closed ones (TRM 2021).

Romania

Romania imposes entry restrictions on its neighbors Ukraine, Serbia, and Moldova, while there are no restrictions towards the travelers from the EU neighbors such as Bulgaria and Hungary. However, regarding the travelers coming from a country with a high epidemiological risk, a negative PCR test is required. Regarding the current travel restrictions in South-East Europe (on 25 January 2021), Romania imposes a negative PCR test for UK passengers upon arrival (Latest travel restrictions 2021). When traveling from Romania to the neighboring countries, there are no restrictions imposed from Serbia, a negative PCR test is imposed from Bulgaria and no entry is possible to

Hungary unless for Hungarian citizens or foreign travelers on the business before provide a negative PCR test or stay at quarantine.

Bulgaria

From 25 January 2021, Bulgaria imposes entry restrictions (negative PCR test) to all neighboring countries when entering, while its neighbors impose no restrictions when border crossing from Bulgaria to Romania, Serbia, and North Macedonia. Traveling from Bulgaria to Greece and Turkey is possible, but in the former case a negative PCR test and quarantine are imposed and for the latter case, a negative PCR test is required.

Serbia

All arrivals to Serbia must provide a negative PCR test performed no more than 48 hours before departure. However, these restrictions do not apply to travelers from Bulgaria, Bosnia and Herzegovina, Montenegro, North Macedonia, and Albania. When traveling from Serbia to the neighboring countries, a negative PCR test is required from Bulgaria, Romania, Croatia, and Montenegro and no entry is possible to Hungary unless for Hungarian citizens or foreign travelers on the business before provide a negative PCR test or stay at quarantine.

North Macedonia

North Macedonia seems to be the country with the most porous borders, compared with the rest of the South-European countries. It also belongs to the less restrictive countries for traveling (Latest travel restrictions 2021). There are no restrictions for traveling to North Macedonia from the neighboring countries, while when entering from North Macedonia to Bulgaria and Greece, a negative PCR test is required for both countries, and additionally, quarantine is required for entering Greece. There are no restrictions when entering Albania, where the measures are relatively soft, although flights from the UK are temporally banned until the end of February 2021.

Montenegro

Regarding the current travel restrictions in South-East Europe, Montenegro is requiring a negative PCR test to the travelers to the country (Latest travel restrictions 2021), while departing from Montenegro to Croatia and Bosnia and Herzegovina, a negative PCR test is required.

Bosnia and Herzegovina

On 25 January 2021, Bosnia and Herzegovina impose a negative PCR test requirement upon arrival, while traveling abroad from the neighboring countries, Croatia and Montenegro require a negative PCR test and there is no restriction imposed from Serbia.

Croatia

Croatia is following the traffic light system, where only travelers from the green countries can enter without any restrictions. The country imposes entry restrictions (negative PCR test) to all the neighboring countries while traveling abroad from Croatia; negative tests are required from Montenegro and Bosnia and Herzegovina. As Croatia is currently belonging to the red list countries, quarantine is imposed on travelers from Croatia to Slovenia. No entry is possible to Hungary unless for Hungarian citizens or foreign travelers on the business before providing a negative PCR test or stay at quarantine. Comparing the restrictions imposed by the above South-East European countries to those imposed by the Central European countries, i.e. Germany, Austria, Slovenia, and the V4 countries (Czech Republic, Slovakia, Poland, and Hungary), one concludes that entry restrictions in South-East Europe are softer and mainly due to the better epidemiological situation to these countries (Worldometers 2021). Actually, by 25 January 2021, everyone entering the Czech Republic is subject to a medical examination to check for COVID-19 infection. Travelers from the EU/EEA or Switzerland need to provide a negative PCR test upon arrival in Slovakia, while those from the UK need to self-isolate and take a second PCR test. All arrivals to Poland must self-isolate for 10 days with some exceptions related to work or residency or present a negative PCR test no older than 48h. No entry is possible to Hungary unless for Hungarian citizens or foreign travelers on the business before providing a negative PCR test or stay at quarantine. The COVID-19 restrictions in Slovenia vary between municipalities according to the traffic light system. If a traveler comes to Slovenia from a 'red list' country, he is asked to quarantine for 10 days. Austria is currently in lockdown and not opens to travelers. Flights from UK, South-Africa, and Brazil are currently banned. Finally, Germany is currently in a partial lockdown. Accommodation is currently not allowed unless for business purposes only. Quarantine entry varies by region (Latest travel restrictions 2021). Due to the above-mentioned restrictions, many problems arise when traveling in Europe. Several cases of travelers have reported the forced return due to the missing of negative PCR tests although these requirements have been imposed after living in the country of origin. A recent example deals with Bulgarian travelers and seasonal workers, who have been returned from Germany because of that reason (nova 2021).

IMPACT OF THE RESTRICTIONS ON THE IMMIGRANTS IN THE SOUTH-EAST EUROPE

All the above comments concern not only the travelers but also the migrant who are searching for new jobs and opportunities, as well as those who are returning to their home countries. Border crossings in South-East Europe are essential for economic and social activities. An important part of them is related to the migrant's seasonal work, skilled or return migration. That is why the knowledge of the COVID-19 mobility impact in this part of Europe is important in terms of predicting the consequences of the reduced mobility on the European economy and society in general.

The pandemic has revealed the vital importance of the seasonal agricultural workers and the continuity of the food supply. Due to the restrictive border measures, the agricultural sectors in the Western European countries faced significant labor shortages. On the other side, the migrant workers, mainly from Eastern and South-Eastern Europe faced important problems related to the inability to earn abroad and to send remittances to sustain economically their families. The COVID-19 pandemic hit the remittances in 2020, compared to 2019 (Vladisavljevic 2020). For example, in Romania, they drop from 7692 in 2019 to 5954 million euros in 2020. For Bulgaria this drop in millions of euros was from 2342 (2019) to 1335 (2020) and for the rest of the countries is as follows: Serbia 4238 (2019) – 3428 (2020), North Macedonia 317 (2019) – 305 (2020), Montenegro 584 (2019) – 547 (2020), Bosnia and Herzegovina 2261 (2019) – 1607 (2020), Albania 1473 (2019) – 1386 (2020) and Croatia 4033 (2019) – 3652 (2020). When comparing the above numbers, one observes that the highest drop corresponds to Romania due to the massive immigration from the country and the massive return due to the pandemic (WBG KNOMAD 2020).

It is estimated that around 1.3 million Bulgarians live abroad, mostly in Europe and about 30% of them, who are working in Europe, are working in the agricultural sector (Chereseva 2020). Regarding the Romanian seasonal workers, only in April and May 2020, approximately 40,000 of them entered Germany. Before the COVID-19 pandemic, this number was approximately 300,000 seasonal workers per year. Germany is an important receipting country that relies on immigrants from the other EU Member States, especially from Central and Eastern Europe, to satisfy its seasonal labor needs (MPD 2020).

An analysis of the International Labour Organization (ILO), performed for Serbia, has shown that there are about 150,000 potential migrants in the country (ILO 2020S). The idea of helping a large number of returnees with incentives has been not enough developed. Similar is the situation in Montenegro, although the size of the seasonal migrants is much lower compared with the previous examples (ILO 2020M).

All the above facts show the importance of the border restrictions to the local economy of the majority of the countries from South-East Europe, which are the usual sending countries of seasonal workers in Western Europe.

It is worth also mentioning that thousands of immigrants from the Middle East face extreme problems in the countries of South-East Europe when intending to cross the borders within the region. There are currently around 9000 immigrants in Bosnia and Herzegovina, who have been trapped within the Western Balkans with closed borders and thus living without any basic services (Infomigrants 2020a). In December 2020, fires had destroyed most of the camp in Lipa, which accommodated about 1200 people. This made the hard conditions even worse at the camp, which had neither heating nor running water. On the other side, attempts to create migrant centers in Bosnia and Herzegovina have often been met by strong resistance from local officials. The situation in some of the neighboring countries is similar. According to NGO, in Serbia, about 150 immigrants were entering daily the country from the south in the past September 2020 (Infomigrants 2020b).

TRAVEL RESTRICTIONS IN SOUTH-EAST EUROPE IN NOWADAYS AND BEFORE 1989

Although there is no formal relation, the above situation remembers about the travel restrictions before the fall of the iron curtain in 1989.

As is well known, during the socialist era, Serbia, North Macedonia, Montenegro, Bosnia, and Herzegovina, and Croatia, together with Slovenia, formed the ex-Yugoslavian federation. Following Uvalić (1992), there were some similarities between the federation and the other socialist economies. Yugoslavia had a regime that did not permit the expansion of the private sector on a larger scale and the social property was not able to provide the right incentives present in a capitalist economy. Despite these socialist elements, self-management has played an important role in the Yugoslav economy due to the economic reforms. These reforms contributed to reaching a higher level of wellbeing compared to the other socialist countries. In this way, a successful decentralized political system has been established, the borders were open for those who wanted to travel and the market did not suffer from shortages observed in the rest of the socialist bloc (Uvalić 2018). The rest of the countries, Romania and Bulgaria, did not enjoy such economic and political freedom before 1989. Bulgarians were allowed to travel only inside the socialist bloc. Special permission was necessary to travel outside, issued mainly to the members of the communist party. The situation was even worse in Romania, where people could travel only with special permission even inside the socialist bloc. On 10 November 1989, the Bulgarian communist regime fell after 45 years of rule, and Bulgarian citizens were allowed to travel again (Rangelova 2006; Markova 2010). Similar events passed after 1989 when the borders open for Romanians (Sajed

2012). The border closure for Bulgarians and Romanians during more than four decades is considered one of the reasons for the later massive migration abroad and for the loss of several hundred thousands of citizens in working and reproducible ages.

CONCLUSION

In this paper, we analyzed the current travel restrictions on 25 January 2021 in South-East Europe, due to the COVID-19 pandemic by researching several countries of the region: Romania, Bulgaria, Serbia, North Macedonia, Montenegro, Bosnia, and Herzegovina, and Croatia. For this analysis, we used the official data collection of displacement tracking matrices, offered by IOM, and compared the porosity of the borders in this part of Europe, due to the COVID-19 restrictions on human mobility. Our analysis reveals that compared to other European countries, the selected region shows relatively porous borders and relaxed travel restrictions.

From the other side, if one compares the dynamics of the epidemiologic situation in the region, no excessive contagion is observed for the moment, which stimulates the corresponding relatively soft measures. Our analysis also shows that the countries with the less restricted travel measures in South-East Europe are North Macedonia and Serbia, where there are no entry restrictions in the case of North Macedonia and no PCR test is required to the majority of the neighboring countries when entering in Serbia. The rest of the countries impose entry restrictions usually referring to present a negative PCT test before arrival.

The current border situation causes important problems to the circular immigrants from these countries that travel to several western European countries. Additional tests and probes sometimes are not affordable for them. In different situations, new instantaneous measures make the travel of these immigrants impossible. Recent cases have been reported regarding travelers and season workers from South-East Europe to Central Europe, where the restrictions are usually stronger. Examples are Hungary, where no entry is possible unless for Hungarian citizens or foreign travelers on the business before providing a negative PCR test or stay at quarantine, or Austria, which is in a complete lockdown. The situation is even worse in the case of the immigrants from the Middle East, who are stuck in the Western Balkans without any economic and social support.

On the other side, the pandemic and the current travel restrictions and border closures are the main reason for the return of many immigrants from the western to their home countries. A reversal of the 'brain-drain' trend, seen more than 30 years after the fall of the socialist regime, the so-called 'brain-gain' is currently observed. It is estimated that several thousands of Romanian, Bulgarian and Serbian immigrants have returned home due to the loss of their jobs in Western Europe after the beginning of the pandemic.

This phenomenon is also accompanied by a drastic fall of the remittances sent to the South-East European countries when comparing 2019 and 2020. Although some negative sites of processes, the mentioned 'brain-gain' contributes positively in several aspects for the demographic and economic development of the South-East European countries by promoting a skilled labor force and new knowledge and experiences.

Finally, we briefly discuss the formal analogy between the current travel restrictions and those before 1989, by emphasizing the difference between the open socialist regime in the former Yugoslavian federation (Yugoslav citizens could freely travel abroad since 1961) and Bulgaria and Romania, which belonged to the socialist bloc.

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PUBLIC POLICY: AN AMORPHOUS CONCEPT IN THE ENFORCEMENT OF ARBITRAL AWARDS

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Abstract: *Public policy permeates the legal principles of a state and its ruling government. The justification of public policy is topical to the ethics and canons acknowledged by that state. These values are determined by the applicable political, social, economic, religious, and legal systems, which differ among states. As public policy usually best illuminates the broad area of government laws, regulations, provincial ordinances, and court decisions, the standards creating public policy alter as states develop. The motif of public policy is critical when the question of enforcement of arbitral awards suffice. There is no definite meaning of the term in the famous Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Arbitration Convention) to enforce foreign arbitral awards. Hence, this paper explores and traces some contemporary trends in defense of public policy as an exception to the enforcement of arbitral awards worldwide.*

Keywords: *Public Policy; Conflict of Laws; International Arbitration; Enforcement of Arbitrary Awards*

INTRODUCTION

The notion of public policy is a frequent component in the issue of arbitration in International Commercial Law. It is prominent among scholars and judges, although it is not susceptible to a commonly recognized definition. Nevertheless, theories agree that public policy reveals some moral, social, economic, or legal principles (Berger 1993). Although heavily criticized as a nebulous and ambiguous concept, public policy's role is nevertheless a fundamental one from many legal systems' viewpoints (Moran, Rein, and Goodin 2008).

For Private International Law (Conflict of Laws or Choice of Law), public policy impedes the exercise of a foreign law that would otherwise be designated by the 'conflict of laws' rules. The rationale for the effect of a public policy is to protect society's essential principles and the state as a whole. Thus, a public policy rule is construed as a "mechanism that corrects the 'choice of law' designation for substantive reasons, namely, the defense of the forum's fundamental legal principles and moral values" (Gruson 2003). However, complexities evolve in defining the principles and values signifying the state's public policy (Dye 1992). The question about the degree of the constitutionality of stated legislation inexorably tends its head when the outcomes of applying the governing foreign law oppose a principle of another legal system that may apply to the legal relationship.

Likewise, since public policy stands within the framework of implementing a specific state's legal principles, the interpretation of the public policy is susceptible to the values and standards accepted by that state. These standards are determined by the applicable economic, political, religious, social, and legal systems, which vary among societies. Therefore, the measures constituting public policy change as these societies develop (Sheppard 2003). Hence it is relevant to investigate the concept and trace some contemporary trends in defense of public policy as an exception to the enforcement of arbitral awards worldwide.

MEANING AND SUBJECT MATTER OF PUBLIC POLICY RULE IN PRIVATE INTERNATIONAL LAW

It is appropriate to explain from the inception the idea of public policy in this discourse, and in detail, to differentiate the layers of public policy's exposition in international arbitration. It is therefore pertinent to define the key terms concerning it, and these are as follows.

Public Policy

The conflict of laws doctrines of public policy and '*l'ordre public'* is shaped by crucial local morality and social order forces (Nussbaum 1943). In practice, public policy shows a common-law origin while '*l'ordre public*' is associated with civil law and has a statutory source (Banu 2018). Public policy is defined by the House of Lords, England, in 1853 as "that principle of law which holds that no subject can lawfully do that which tends to be injurious to the public or against public good". In French courts, the concept of public policy or '*l'ordre public*' denotes "the system of principles that reinforce the function of legal systems in each state" (Husserl 1938). This focuses on the economic, social, and moral values that bind a society together. In a nutshell, public policy means those ethical, social, or economic considerations exercised by courts as justifications for repudiating enforcement of an arbitral award being domestic or foreign.

International Public Policy

The term 'international public policy' denotes the principles which state courts apply to foreign awards rather than domestic awards (Ghodoosi 2016). International public policy is recognized to be limited to national public policy because not every domestic public policy rule is automatically part of the international public policy. Nonetheless, international public policy is thorough and subjective to each state. A state's international public policy tends to be interpreted more narrowly than its domestic public policy. A foreign arbitral award is less likely than a domestic one to be refused enforcement.

Substantive and Procedural International Public Policy

Substantive public policy (*l'ordre public au fond*) covers the recognition of rights and obligations by a court or enforcement in a court about the merits of the decision, in contrast to procedural public policy; the process by which a dispute is decided (Howlett 2017). An example of the objective and fundamental principle is good faith and prohibition of abuse of rights, especially in civil law states. Other examples cited by courts and commentators are *pacta sunt servanda*, prohibiting confiscation without charge, and prohibiting discrimination (Martinez 1990). There is a debate whether and to what extent the award of unlawful relief, for instance, if punitory or exemplary damages, constitutes a violation of international public policy. The category of fundamental principles also includes the proscription against actions that are *contra bonos mores*, such as genocide, piracy, drug trafficking, terrorism, pedophilia, slavery, and smuggling.

Some fundamental principles, such as the prohibition against corruption, may also fall into one or more of the other categories. For example, permitting corruption may also be contrary to the 1997 OECD Convention on Combating the Bribery of Foreign Officials in International Transactions. Procedural principles include the requirement that the courts be impartial, issuing the award as induced or influenced by corruption, fraud, infringements of natural justice rules, and the equality in appointing the Court by parties. Notably, procedural public policy should not include mistakes regarding the law or the tribunal's facts unaccompanied by some extreme bureaucratic irregularity.

In contrast to the Supreme Court of Zimbabwe's decision in *Zimbabwe Electricity Supply Authority v. Maposa* (Oppong 2013), the arbitrator stipulated the wrong start date in calculating the claimant's entitlement for lost salary. This led to a windfall to the claimant of approximately 13 months' salary. After reviewing the implementation policy bar of the New York Convention (the Convention) and the UNCITRAL Model Law on International Commercial Arbitration (Model Law), the Court held under Article 34 or 36 of the Model Law, "the Court does not exercise an appealing power either to uphold or set aside or decline to recognize and enforce an award by having regard to what it considers should have been the correct decision". However, the deliberation in an award is beyond mere faultiness or incorrectness. Creating intense discrimination in its defiance of logic or accepted moral standards, a sensible and fair-minded person would consider that the theory of justice in Zimbabwe to be unpopular since it is not in defense of the public policy. The same result applies when the arbitrator does not hold his opinion to the question, or the issue is misunderstood, and the resulting injustice extends the point cited above.

Other examples often cited are currency controls, price-fixing rules, environmental protection laws, prohibitions, blockades, or boycotts, tax laws, laws to protect the parties are supposed to be in a lower negotiating position than consumer protection laws. An example of an international commitment is the United Nations Security Council resolution to impose sanctions. These decisions immediately bind UN member states under Article 25 of Chapter V of the UN Charter.

A state is also bound to meet the terms with the treaties it has ratified. In *Parsons & Whittemore* (Evans 1975), the United States Court of Appeals held that public policy did not equate with 'national policy' in the diplomatic or foreign policy sense and enforce an award in favor of the Egyptian party simply because of tensions at that time between the United States and Egypt. Would the outcome in *National Oil Corp. v. Libyan Sun Oil Corp* (Kuner 1990) be different today? The Delaware court denied a challenge to an award at the enforcement phase because it favored Libya, "a state is known to sponsor international terrorism". The court noted that the United States still recognized Libya's government had not declared war on it and had expressly permitted it to bring an action to confirm the award. The Court said: "To read the public policy

defense as a parochial device protective of national political interests would seriously undermine the Convention's utility". This provision was not intended to perpetuate international politics' vicissitudes under the heading of public policy. In *Baker Marine (Nigeria) Limited v. Chevron (Nigeria) Limited*, Baker Marine has sought to enforce two arbitral awards by a Nigerian court. The defeated party requested the evacuation prizes. After the Nigerian court overturned both cases, Baker Marine attempted to enforce the arbitration award in the United States following the New York Agreement, arguing that the Nigerian court's logic for revoking the awards was invalid under the Federal Aviation Administration (FAA) criteria. The district court rejected the argument because Baker Marine agreed that disputes should be arbitrated under Nigerian law. There was no claim that the Nigerian Supreme Court was an incompetent authority in that country. Drawing on the principles of courtesy within the agreement, the second US Court of Appeals confirmed.

Transnational or Truly International Public Policy

Transnational public policy refers to those principles that represent a universal accord as to collective norms and putative standards of conduct that must always be applied (Pryles 2007). The concept comprises indispensable rules of natural law, universal justice principles*, jus cogens* in public international law, and the generally accepted principles of morality occasionally referred to as civilized nations (Stone 2008). Transnational public policy differs from public policy of any state, though it includes a public policy beyond state boundaries. Such public policy is well-defined as evolving out of an international consensus involving universal standards as to norms of conduct that are primarily recognized and approved as unacceptable in most civilized countries, such as bribery, corruption, slavery, religious discrimination, murder and, terrorism. It is widely established that transnational public policy has an even more restrictive scope than international public policy (Ryabinin and Varady 2018).

Public Policy in the Arbitration Process

Public policy evolves from two phases in the arbitration process: a) the arbitration process itself: where the arbitration resolves the conceivable conflict concerning the pertinent legal systems; and b) arbitral award: in the enforcement of the arbitral award before the national courts, the judge is possibly required to protect fundamental policies of the Forum. In deciding the recognition and enforcement of arbitral awards, national judges have conventionally been apprehensive with the public policy of the Forum. It has become a norm for reference to be made to a state's public policy in recognition and enforcement (Fei 2010).

Public Policy and Mandatory Rules

An arbitral forum must discern between public policy and mandatory legal provisions known as '*normes d'application immediate ou necessaire'* or '*lois de police'* (Hood 2009).In defining mandatory rules, Article 9 of the Rome I Regulation states that:

> overriding mandatory provisions are provisions the respect for which is regarded as crucial by a country for safeguarding its public interests, such as its political, social, or economic organization, to such an extent that they apply to any situation falling within their scope, irrespective of the law otherwise applicable to the contract under this Regulation.

Temporarily used as synonymous, these provisions illustrate an analogous concept in various jurisdictions. They are commonly described as mandatory provisions set out in public interest. Under duress, it applies to all relationships connected with that legal system and may abound on any intractable conflict of law rules.

Two characteristics of mandatory provisions follow from this definition: first, these rules are introduced to protect some policy essential to the state, and secondly, their application is demanded irrespective of and even before the designation of the substantive law governing the dispute (Dickinson 2012). Necessarily, all public policy rules are mandatory because they reflect the rudimentary beliefs of morality and justice. However, not all mandatory rules rise to public policy because the interests protected may not concern the societies' fundamental values.

The Application of Mandatory of Rules

Mandatory rules exist principally in four situations. These comprise *force majeure*, mandatory rules of the *lex contractus*, transnational public policy, and rules of the seat (Bermann 2019).

Force Majeure

The tenets of *force majeure* permit arbitrators to review mandatory rules, making the execution of contractual obligations burdensome, given they were neither conceivable nor evident in the parties' contract. However, the mandatory rule is deemed under the *lex contractus* as an element of fact (International Council for Commercial Arbitration 1987). The arbitrator needs to pinpoint the applicable *force majeure* rules and then decide whether the provisions and practices of the mandatory rule in question satisfy that test. Therefore, the category of *force majeure* is not controversial since it requires that the arbitrators do nothing more than applying the parties' chosen law. For example, suppose trade sanctions from the African Union disrupted a contract governed

by English law to ship goods from the United Kingdom to Ghana. In that case, the sanctions may be tantamount to *force majeure* under the *lex contractus.* Nevertheless, they would not apply precisely. Also, not all cases will deal with *force majeure* in the same way, as their scope and implications will differ in the country's national legal history and politics, whose law regulates the dispute.

Transnational Public Policy

Homogenously, it is acknowledged that arbitrators must apply any mandatory rule that signifies transnational public policy to preserve minimum standards of conduct and behavior in international commercial relations (Kossuth and Sanders 1987). As transnational public policy symbolizes values that supersede those of distinct national systems, arbitrators have an utmost duty to the international community, which means they need to decline to apply any mandatory rules that conflict with transnational public policy. They should also turn down the parties' requests to apply chosen laws that conflict with such policies. The International Law Institute's Resolution on the Autonomy of Parties confirms this stance, affirming that "in no case shall an arbitrator violate international public policy principles as to which a broad consensus has emerged in the international community"(International Law Institute 1991). This statement clarifies that this approach's explanation rests not in the doctrine of the mandatory rule but in that of international public policy, justifying why this kind is undebatable.

The obstacles with a transnational public policy are, primarily, for parties, the evidentiary hurdle in determining a given principle's universality; and second, for arbitrators, ambiguity as to the extent of universal acceptance required before the principle turn out to be truly international. Arbitrators' response if an express choice by the party conflicts with an established international public policy poses is a concern. Ideally, arbitrators are permitted to ignore the latter, but there are bottlenecks to uphold the jurisdiction if the express choice is overlooked.

Mandatory Rules of the Lex Contractus

Distinguishing between the *lex contractus* adopted by parties and those chosen by arbitrators is needful. The *parties have selected the lex contractu*s on the one hand, and the *lex contractus* has been opted by the arbitrators on the other hand. The *lex Contractus* adopted by the parties is recognized if parties favor the *lex contractus*. Its mandatory rules must be applied, provided they are not divergent to transnational public policy. Arguably, suppose the parties had no anticipation for a mandatory rule of the *lex contractus* to be ignored. The arbitrator is obliged to respect their will as they could have opted for a law that did not cover the applicable mandatory provision (Bernardini 2008). This is valid if the only limit to the parties' control over the applicable

law is transnational public policy. It is putative that mandatory rules can be applied even when the parties do not want them; such resolution will be the admissible but not decisive factor in the arbitrators' verdict (Derains 1987). According to how it balances competing private interests, it is espoused that parties do not choose a law according to its public policy provisions (Voser 1998). Therefore, the impulsive application of mandatory rules of the *lex contractus* is futile to party expectations, giving unjustifiable benefit to the state's public policy goals that afford the *lex contractus* (Park, Craig, and Paulsson 2000).

The Lex Contractus Chosen by the Arbitrators

There is often a failure on the part of parties to opt for a law to apply to their relations, either because they cannot agree on a rule, they had inept lawyers who overlooked a choice of law clause, or because they are more involved with making a deal than planning for its undoing (Mistelis 2009). When this ensues, arbitrators can typically either opt for the conflict of law rules or hastily prefer the substantive law they deem suitable. Either way, arbitrators must endorse the law that best concurs with the parties' legitimate expectations, even though differences between expectations regarding ultimate substantive law and expectations as to applicable conflict principles. Upon determining the substantive law, the conventional procedure is for arbitrators to employ applicable mandatory rules inevitably. Besides, mandatory rules are applied more swiftly than where an express choice of law exists (Chukwumerije 1994).

By not unequivocally acquiescing to the arbitrators deciding the applicable law, the parties may have expected no more than the arbitrators' choice to be treated as if it were the parties' own. This would make it difficult to rationalize applying foreign mandatory rules more readily than situations where a choice of law clause is present. Conversely, by leaving it up to the arbitrators to choose the applicable law, it may be that the parties do not care as much about which law applies. This method fits cogently with and even supports the 'parties' expectations' category as argued. Adopting such a type makes the variance between a party and arbitrator choice of the *lex contractus* redundant.

Rules of the Seat

Jurisdictional purists suppose that arbitrators' powers originate from the law of the seat and so will inevitably employ its mandatory rules (Ogunranti 2019). On the contrary, contractualist purists deny the importance of the seat and so would, in theory, be hesitant to apply its mandatory rules at least where they correlate to substantive, as opposed to procedural, issues (Naón 1992). In procedural matters, designating the seat ought to at least involve acceptance of the *lex arbiteri*. Regarding the substantive rules,

the assessment may be influenced by the selected procedural rules. For example, the International Chamber of Commerce (ICC) Rules reveals that when the ICC International Court of Arbitration scrutinizes arbitrations under its jurisdiction, it considers, to the extent practicable, the requirements of mandatory rules at the place of arbitration. While this does not require mandatory rules to be applied, the Court is generally reluctant to interfere in the awards' substantive parts. Article 27 of ICC Rules states (ICC Rules of Arbitration 1998) that:

> Before signing any Award, the Arbitral Tribunal shall submit it in draft form to the Court. The Court may lay down modifications as to the form of the Award and, without affecting the Arbitral Tribunal's liberty of decision, may also draw its attention to points of substance. No Award shall be rendered by the Arbitral Tribunal until it has been approved by the Court as to its form.

It is worthy to note that most national arbitration statutes provide another basis for setting aside awards made within their territory. The New York Convention consents non-enforcement if an award has been put aside or barred by an adept authority of the country it was made, Article V (1) (e) stipulates: "The award has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which or under the law of which that award was made". Therefore, enforceability matters should provide mandatory rules of the seat a solid assertion to be employed, at least in as much as they signify the pertinent public policy. The New York Convention is only non-mandatory; preference is given to party autonomy should there be a conflict. With the prevalent acceptance of the Model Law (United Nations Commission on International Trade Law 1995), several states may have identical mandatory procedural rules for arbitrations. If an award contravenes such a provision at the seat, jurisdictions that have ratified the Model Law are not likely to approve enforcement.

Where substantive mandatory rules entail, the issue is indistinct. Provided that there are some, even though not numerous jurisdictions seen to implement awards that have been set aside at the seat, Austria, Belgium, France, and the US have recognized and enforced awards set aside at the seat of arbitration. However, this has often been done under local law, not the New York Convention (Redfern and Hunter 2004). Enforceability concerns will not be vast if such cases are plausible. For instance, where there is no relevant substantive mandatory rule issue from either party's home country or the enforcement country. Still, a case may arise if the seat fails to stipulate the contract's applicable law and the plausible place of enforcement in a, particularly pro-enforcement country. To admit, contractualist arguments in this circumstance are challenging because an arbitrator is under strict obligation by a sovereign state to do their bidding. As the direction is intended at the parties and the arbitrator is assigned

with giving force to it utilizing a mandatory rule, the same would be true. If not, the arbitrator would be aiding the stalling of the state's direction (Beatson 2017). In fact, by law, this is not sanctioned.

One exception may be substantive rules that are expressed as mandatory and not intended to apply to the dispute's specific fact situation. For example, if the mandatory competition or anti-trust rules, designed to protect a state's domestic market, are expressed broadly enough to prohibit a relationship which has only a fragile connection to that market, and the parties are foreign and have chosen the seat purely for convenience, then it is arguable that the law need not be applied.

Following this exception and the well-known opinions advocating against the critical application of all relevant mandatory rules of the seat, it would be going too far to consider their application entirely uncontroversial (Petrochilos 2004).

Arbitrability and Public Policy

The issue of arbitrability of a dispute is critical in discussing public policy. The rules on arbitrability may limit parties' freedom to substitute arbitration for the jurisdiction of the national courts by excluding specific subject matter from arbitration, so-called objective arbitrability, or restricting certain parties' ability to participate in arbitral proceedings subjective arbitrability.

A precondition for determining the arbitrators' competence, arbitrability may arise as soon as the parties submit the dispute to arbitration. At this initial stage, one of the parties may assert a lack of arbitrability either before the arbitral tribunal or directly before a national court. The question may be raised in proceedings before national courts at the time of recognition and enforcement of arbitral awards. According to Article V (2) (a) of the New York Convention, arbitrability constitutes a separate ground for the refusal to enforce arbitral awards.

According to some opinions (Sattar 2011), this text may be excessive because arbitrability is part of public policy and included in Article V (2) (b). Others (Dar 2015) argue that rules regarding the arbitrability of disputes do not always rise to the level of public policy. Although legal provisions determining arbitration are always mandatory, some commentators argue that restrictions on certain disputes' arbitrability may not reflect national policies of such a fundamental character to qualify them as public policy issues. In the area of objective arbitrability, issues regarding consumer protection, anti-trust and competition, industrial and intellectual property rights, restrictions on foreign trade, foreign exchange restrictions, and securities transactions are among the subject matters most commonly proposed for exclusion from the jurisdiction of arbitrators.

The concept of subjective arbitrability refers to certain entities' capacity, such as the state and state institutions, to conclude arbitral agreements. The limitations are usually related to one of the parties' particular relationships to the state, such as state-

controlled enterprises. Two questions arise in this respect. The first one is whether the responsible government official or other authority had lawfully bound the respective entity to arbitrate. This issue is to be solved by the applicable law as determined by the choice-of-law rules. The second question relates to the principle of sovereign immunity. It is a generally accepted principle of international public policy that a state party to an arbitral agreement may not claim exemption from arbitral proceedings to which it has acceded by a previous contract. However, suppose the state party's contractual obligations conflict with what would be considered a significant national interest by the National Forum. In that case, the public policy defense might prevent the award's enforcement against that party in its home state.

The Interpretation of Public Policy by Diverse Courts

The various terminologies used in national legislation, case law, and commentaries suggest that courts of multiple countries apply a constricted public policy concept (Sheppard 2004). France and Portugal's legislations recommend the application of international public policy (Graffi 2006). The courts of several other European civil law countries like Germany, Italy, and Switzerland (Rowley, Gaillard, and Kaiser 2019) expressly apply international public policy. Commentators from other countries like the Netherlands, Denmark, Spain, Norway, and Sweden state that their courts apply public policy restrictively (Beatson 2017). However, the international public policy's application is generally the country's public policy in question, which applies to international awards and not transnational public policy. When remarking on the French approach Fouchard and Goldman (1999) noted: "The international public policy to which Article 1502.5 refers can only mean the French conception of international public policy or, in other words, the set of values a breach of which could not be tolerated by the French legal order, even in international cases".

Some courts have approved the application of transnational public policy, but this has not received widespread acceptance. The Milan Court of Appeals (1992) may have considered a more transnational concept in re-counting the international public policy as a "body of universal principles shared by nations of like civilization, pointing to protect fundamental human rights, often personified in international conventions". Swiss Federal Court at *WV. F. and V.* (1994) supported considering a "universal comprehension of public policy, in which an award will be contradictory with the public policy if it is divergent to the underlying moral or legal principle admitted in all civilized countries".

Yet, in *Les Emirats Arabes Unis v. Westland Helicopters* (1994), after a long academic dialogue, rebuffed their stance, preferring instead pragmatic approach. In France, the Paris Court of Appeal demonstrated uncertainty about applying this theory in *Fougerolle v Procofrance* (1990). It is noteworthy that certain activities, such as corruption, violate both French public policy and international business ethics.

Common law states also restrict the scope of public policy but neglect the transnational policy. The United States applies a restrictive concept of public policy. For example, public policy definition often cited in international arbitration is Judge Joseph Smith's description at *Parsons & Whitmore* (Evans 1975). He considers the enforcement of a foreign arbitral award might be refuted for policy reasons "only where enforcement would violate the forum state's most basic notions of morality and justice". The same year, the Supreme Court, in *Scherk v. Alberto-Culver Co.* (Deason 2005), recognized the difference between domestic and international public policy. It had implemented an arbitration agreement on an emerging claim in international trade. However, arbitration on a similar claim would have been prohibited if it had arisen from a domestic transaction.

English courts are yet to explicitly incorporate the concept of international public policy though their emphasis is on the importance of the final nature of the awards when considering an objection to enforcement based on illegality and have endorsed a restrictive concept of public policy. For example, the English Court of Appeal Sir John Donaldson MR, in *D.S.T. v. Rakoil* (1987) and the Supreme Court, in *Renusagar Power Co. Ltd v. General Electric Co.1994* (Aragaki 2018) in India. Public policy has been interpreted more restrictively than previously. The Court held that to attract the policy bar, it is required to enforce the decision more than violating India's law in consideration that the term 'public policy' should be interpreted in the sense in which the principle of public policy is applied in the area of private international law and that the enforcement of a foreign decision contradicts with the public policy if it conflicts with (a) the fundamental policy of Indian law; (b) India's interests; or (c) Justice and ethics. A Singaporean judge (Ho 1996) reiterated: "The principle of comity of nations requires that the awards of foreign arbitration tribunals be given due deference and be enforced unless exceptional circumstances exist". A 1999 decision of the Hong Kong Court of Final Appeal highlights the issues faced by many courts the world over and how the International Law Association (ILA) sought to give guidance. The Court addressed whether the applicable public policy was that of Hong Kong or some shared public policy and to what extent a national court could or should look at the practice of other courts.

The Court overruled the idea that public policy under the New York Agreement concerned some "standard common to all civilized nations". However, public policy has been narrowly interpreted. It stated that the refusal to implement a decision of the New York Convention for policy reasons, "the award must be so fundamentally offensive to that jurisdiction's notion of justice that, despite it being a party to the Convention, it cannot reasonably be expected to overlook the objection". The Court accepted that, in numerous cases, the relevant policy of the Forum was consistent with the policy of other countries and that it would be appropriate to examine the willingness of other state courts to proceed with the enforcement of the Convention's decisions made in conditions that did not meet their domestic standards.

International Law Association (ILA) Recommendations on Public Policy

The ILA was founded in Brussels in 1873, its current headquarters in London. The ILA comprises 20 Committees and 8 study groups ranging between public, private, and commercial law, with 52 members in the Arbitration Committee covering different continents. The ILA International Commercial Arbitration Committee conducted a six-year study into public policy application by enforcement courts (Mayer and Sheppard 2003) and concluded in 2002. Despite the distinctive legal and cultural traditions of state courts, public policy seldom precludes international awards enforcement. The Committee resolved that greater harmonization of approach would pilot significant uniformity and predictability, which would dissuade unmeritorious disputes to awards. The ILA recommended the application of 'international public policy', namely, that element of a state's public policy that would avert a party from citing a foreign law or foreign judgment or foreign award if breached. It did, however, identify various categories of international public policy by observing that the international public policy of any state includes:

- Fundamental principles, on justice or morality that the state wishes to protect even when it is not directly concerned.
- Rules designed to serve the essential political, social, or economic interests of the state, known as '*lois de police*' or 'public policy rules'; and
- The duty of the state to respect its obligations towards other states or international organizations.

CONCLUSION

The public policy omission to recognition and enforcement of international arbitral awards establishes ambiguity concerning enforcement of these awards, mainly because the contracting states have diverse approaches to public policy issues. For instance, on the subject of transnational law, Jessup (1940) defined it as "the law which regulates actions or events that transcend national frontier including both public/private law distinctions". In recent times, the term 'transnational law' is used to describe law creation in the broad context by governments, international organizations, and non-state actors, for example, commercial organizations. While this theory was developed for public international law, it has long since been advocated in private international law and commercial arbitration.

Besides, this paper incorporates a different definition of the term 'transnational law'. Transnational law depicts legal principles generally recognized by a significant number of national laws. These universal law principles differ from private entities' standard rules because they derive their binding force from national laws. However, they are also inconsistent with the regulations laid down by the state because they are more

general principles on which these laws are based. The general principles theory of law is that there are basic ideas of justice found in a wide range of national laws and directly applied to legal disputes. It is a slightly platonic notion that one can see pure pictures of justice through national laws' shadows.

The elemental stage of arbitration is the question of arbitrability. Arbitrability delineates arbitral issues and non-arbitral ones. Arbitrability hence extends to the arbitral tribunal's jurisdiction over a dispute. Arbitration premises on the parties' contractual agreement. There are two reasons why the arbitral tribunal may lack jurisdiction; either the parties have not reached a settlement to submit the specific dispute to arbitration, or the dispute cannot be submitted arbitration at all. The former is a question of contract interpretation, while the latter pertains to complex considerations of public policy. It is the latter question that has created most problems in arbitral practice.

Article V (2) (b) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and Article 36 (1) (b) (ii) of UNCITRAL's Model Law both stipulate that a state may fail to enforce an award if it is contrary to the public policy of the state in which may fail to enforce an award if it is contrary to the public policy of the state in which the enforcement is intended.

Unfortunately, neither defines 'public policy'. The International Bar Association declared the Public Policy Exception in the New York Convention in October 2015, reaffirming that public policy is an elusive and evolving concept deficient in precise definitions. While the New York Convention has been hailed by many, it is deemed by some that the public policy exception would weaken the purposes of the Convention. There have been concerns it granted a fruitless defendant and the state a 'second bite' at frustrating enforcement. While others perceived it as an essential 'safety-valve'. The New York Convention architects sought to restrict the public policy clause's scope as far as possible.

The cases reviewed in this paper show that Article V (2) (b) of the Convention has not generated any significant disruption. Attempts to withstand enforcement on justifications of arbitrability and public policy have rarely been successful. A more feasible way forward towards accomplishing better predictability would be for the international arbitration community to reach a comprehensive agreement as to which 'exceptional circumstances' would justify a national court denying enforcement of a foreign arbitral award and for the courts to have regard to any such consensus. The time has come for there to be a comprehensive model of 'arbitrability'. It is anticipated that the ILA Recommendations embody a broad consensus. This would provide more clarity in understanding and implementing public policy as a bar to the enforcement of international arbitral awards if implemented. Most major arbitral jurisdictions define public policy or '*l'ordre public*' narrowly and utilize it remarkably when an award infringes fundamental and largely international legal norms.

Undeniably, the public policy violation must attain a precise upper limit to justify declining enforcement, such as 'blatant', 'flagrant', or 'intolerable'. The exclusion can legally apply, for instance, to awards concerning contracts that would be illegal under national laws, such as those concerning crime.

There is a reassuring tendency toward the pervasive approval of a narrow analysis of the public policy exception. For example, the Indian Supreme Court was once infamous for a string of decisions endorsing an ever-expanding definition of public policy to include the mere error of law, an approach rejected by the US and all leading European jurisdictions. The Indian Arbitration Act 2015 now explicitly precludes refusal of enforcement of foreign awards based on 'patent illegality' or law error. The High Court of Delhi asserted that the amendments 'brought about a material change' and that the public policy defense must be interpreted 'extremely narrowly', for example, in *Cruz City 1 Mauritius Holdings v Unitech Limited*.

A Chinese court in 2016 rejected to enforce an ICC award on the foundation that it breached Chinese law obliging that all arbitrations must be institutional, and the Court found that the ICC arbitration was not unequivocally institutional. This decision amalgamates Chinese domestic law with public policy and is hence open to criticism. Given that developments have been observed any decision of the Chinese court refusing to enforce a foreign award since 2000 is subjected to the Supreme People's Court's mandatory review on a more pro-enforcement basis, the decision may yet be repealed.
In *Sinocore International Co Ltd v. RBRG Trading (UK) Ltd*, 2017, the United Kingdom reiterated its 'pro-enforcement bias', stressing that enforcement of awards about legal contracts and awards would not be 'ruined' by fraud or bribery. Thus, English courts are not adamant about enforcing a contract procured by bribery. Some jurisdictions do still retain an unsophisticated methodology to the public policy omission. For example, Egyptian courts have considered the ensuing fall under the public policy exception: the absence of perceptive for damages awarded by the tribunal, late payment interest exceeding the maximum ceiling set out in the Egyptian Civil Code, and mandatory approval of the competent minister to arbitrate a dispute arising out of an administrative contract. Russian courts usually refuse enforcement of awards where the number of damages is deemed punitive or disproportionate to the breach. Other jurisdictions such as Poland, Finland, Italy, Greece, and, currently, Portugal have objected to enforcing awards on the same footing.

New tendencies in the analysis of the public policy exception by legislators and national courts encourage prudent confidence that leading jurisdictions have come together in the tradition of embracing a narrow interpretation of the public policy exception.

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ACCESS TO JUSTICE IN THE TIME OF PANDEMIC: FUNCTIONING OF LEGAL AID FORMS IN NORTH MACEDONIA

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Abstract: *The international community has significantly increased its focus on the improvement of justice systems around the world, in recent years. With the increase in effort and interventions in the sector, there has been a need to create tools to assess justice systems, to identify the main elements affecting the workings of the justice machinery. In a context of increasing interest and engagement in justice systems reform, the ability of citizens to access justice institutions to address their needs has come to be seen as an essential element of development, human rights, democracy, and the rule of law. The Republic of North Macedonia has been dedicated in a certain amount to improving the access to justice following these global trends. However, the pandemic has brought to the surface many obstacles in the realization of these efforts and imposed serious issues that need to be further solved. In this paper, we will elaborate on the present situation in North Macedonia from the personal experience of law clinics and civil society organizations that work and contribute closely on this issue. Furthermore, we will identify particular points that need to be advanced and relevant stakeholders to be engaged, to improve the situation, and bring justice closer to everyone.*

Keywords: *Justice; Legal Aid; COVID-19; Law Clinic; Civil Society; Practice; Legislation*

INTRODUCTION

Human rights are fundamental rights and freedoms that belong to every person in the world, equally, from birth to death. They are guaranteed, no matter where a person comes from, what they believe in, or how they choose to live their life. They can never be taken away, and are based on common values such as dignity, impartiality, fairness, equality, respect, and independence. These rights are guaranteed by numerous national and international instruments.

The right to access justice is one of the basic human rights. In the absence of access to justice, people cannot express their views, protect and exercise their rights, oppose discrimination, or call to account. The administration of justice should be objective and non-discriminatory, and the exercise of this right is closely linked and depends on the availability of legal services for all citizens, regardless of their material and social status.

Legal aid programs are a central component of strategies to improve access to justice. Every state must take all necessary steps to ensure fair, transparent, effective, non-discriminatory, and accountable services that promote access to justice for all, including legal aid. Hence, access to justice for all citizens depends, among other things, on the efficiency and quality of the system of free legal aid, and thus guarantees the realization of human rights.

In this paper, we will elaborate on the present situation in North Macedonia from the personal experience of law clinics and civil society organizations that work and contribute closely on this issue. Furthermore, we will identify particular points that need to be advanced and relevant stakeholders to be engaged, to improve the situation, and bring justice closer to everyone.

WHAT WAS BROUGHT BY THE NEW LAW ON FREE LEGAL AID?

Equal access to justice for all citizens is a basic human right whose realization must be guaranteed by the legal system of the state. The Constitution of the Republic of Northern Macedonia, as the highest legal act, does not directly guarantee the right to free legal aid, but it does so indirectly through the provision that guarantees equality of all citizens (Constitution of RNM 1991, Article 9). Hence, the existence of a Law on Free Legal Aid is only one step towards exercising this right.

The Law on Free Legal Aid in the Republic of North Macedonia was first adopted in 2009 and came into force in July 2010. It was a complex legal solution whose main goal was to provide equal access to justice through free legal aid for vulnerable categories of citizens who cannot solve the legal problems they face due to lack of funds. During 2011, 2014, and 2015, this law underwent legal changes, but despite that, during its implementation, several problems came to the surface that seriously limited

the access to justice of citizens, so much that the very purpose for which it was adopted, was brought into question. The shortcomings were seen in the ambiguity of the legal text, the weak institutional set-up, as well as its non-functionality and non-compliance with the legal needs of the population.[1]

Hence, because this law failed to meet the needs of those who need legal aid the most in terms of fulfilling the principle of equality of all before the law and before the institutions, it was replaced by the new Law on Free Legal Aid from May 2019 year, which prescribes innovations that are expected to have a positive impact on the promotion of the right of individuals to access justice and equitable judicial protection, which is envisaged as its main goal (Law on free legal aid 2019, Article 2).

The Law on Free Legal Aid now provides two forms, 'primary' and 'secondary', and sets out different criteria that applicants must meet. Primary legal aid can be requested by any person, and secondary legal aid can be used only by persons who meet certain conditions, regarding their income and financial situation, property, and living conditions (Law on free legal aid 2019, Articles 17, 18, 19 and 21).

Primary legal aid is provided to any interested person with a domicile or residence on the territory of the country. The initial meeting in the Ministry of Justice, in the authorized association, or the legal clinic (which are now authorized providers of primary legal aid) is to explain to the interested person the nature of the problem or to direct whether the problem is a legal issue, whether it is within the scope of the legal services they provide, as well as the types of legal aid that are most appropriate for the person. Under the new law, providers were given greater powers, in addition to general legal advice and information, to assist in completing forms, to mediate secondary legal aid applications, and to file complaints to the Commission for Protection against Discrimination and Ombudsman as well as requests for protection of freedoms and rights to the Constitutional Court. The providers do all this without any compensation and have no right to act in the name and on behalf of the applicant during the procedure for primary legal aid (Law on free legal aid 2019, Articles 17, 18, 19, and 21).

Concerning the second form, secondary legal aid, the law clearly defines it as aid granted to a person whose request is justified, who needs professional legal assistance from a lawyer for specific legal work, and who is unable to pay the costs of the procedure due to his financial situation. Secondary legal aid includes representation in court proceedings, a state body, the Pension and Disability Insurance Fund of the Republic of North Macedonia, the Health Insurance Fund of the Republic of North Macedonia, and persons exercising public authority. This includes representation before all levels in civil, administrative procedure and administrative disputes, representation before a notary public in a procedure for dispute resolution, compilation of submissions of a debtor before a competent enforcement agent, when enforcement is carried out by

[1]For more information, please visit: https://www.fosm.mk/CMS/Files/Documents/javna-politika-062014.pdf

selling real estate, and exemption from costs in accordance provided in the Law on Free Legal Aid or some other law.[2]

The applicant for secondary legal aid, independently or with the assistance and support of the providers of primary legal aid, fills out a request for secondary legal aid to which he/she encloses a statement on his / her financial situation and the financial situation of his / her family members, as well as all the documents they own and can provide, that refers to the legal issue for the solution of which legal assistance is required. The authorized official from the Ministry of Justice, within 15 days from the receipt of the request, obtains all the data and determines whether the applicant meets the conditions for approval of secondary legal aid. It prepares a notification denying the request for secondary legal aid or a confirmation of approving it. If the request is approved, the official organizes the first meeting between the lawyer and the beneficiary of the secondary legal aid, stating the date of the meeting in the confirmation (Law on free legal aid 2019, Article 23).

CHALLENGES AND OPPORTUNITIES IN PROVISION OF FREE LEGAL AID

The old law on Free Legal Aid, according to the indicators, showed that it did not fulfill its purpose, both because it contained very strict legal requirements that citizens had to meet to receive legal aid, and because of the enumerated legal issues for which it was approved. Thereby, there was a very small number of submitted requests for legal aid, and there was a trend of almost twice more rejected than approved requests for legal aid (Helsinki Committee for Human Rights 2019, 15).

The law from 2019, with all the changes of material, procedural and institutional nature, was expected to be 'revolutionary' that would change such a situation, but still the data from the current, although short-term implementation, do not indicate such a positive dynamic.

In the statistical period of 01.10.2019 to 31.12.2019, a total of 113 persons received primary legal aid, and 77 persons requested secondary legal aid. Only 46 of them received it, 28 people were rejected, and 5 people were given a decision terminating the secondary legal aid (Ministry of Justice of the Republic of North Macedonia 2020, 16).

In the following analyzed statistical period, from 01.01.2020 to 31.10.2020, a total of 204 requests for secondary legal aid were submitted, only 109 of which, were

[2]A person who is granted secondary legal aid is exempt from legal fees, as well as court fees, expertise fees and administrative fees (Article 13, point 5, Law on Free Legal Aid, published in Official Gazette of the Republic of North Macedonia no.101/2019).

approved. The remaining 49 were denied, 33 are in the procedure, 2 were rejected by the decision, and 11 are stopped.[3]

Some of the generating reasons for these negative trends refer, this time not so much to the need for more solid legal solutions for the legal aid system, but the insufficient promotion of 'legal aid services' and the lack of information of the citizens, as well as the promptness of decision-making.

On the other hand, the data on the increase in the number of free legal aid providers are optimistic. In 2020, three additional legal clinics and one authorized association for providing primary legal aid were registered, and the register of lawyers authorized to provide secondary legal aid was increased from 396 to 507. Their internal activity, as well as the Free Legal Aid Awareness campaign in North Macedonia, which emerged as an initiative of the Ministry of Justice of North Macedonia, is likely to result in raising awareness, promoting the right to free legal aid and its importance in achieving effective access to justice for all.

COMMUNITY-BASED FORMS OF LEGAL AID AND THEIR ROLE AS 'FIRST INSTANCE'

Access to legal aid is the main condition for providing access to justice for all since it is the only way to guarantee the realization of human rights following internationally accepted standards. However, not always the system of legal aid is given the proper attention to, and is often underestimated when creating main state policies and strategies. Legal aid is often used by governments:

> As a political volleyball that can be swatted out of bounds in the name of fiscal expediency. After all, people who need legal aid are not the largest voter base. This perspective fails to appreciate the overarching value that a strong legal aid program brings to society — ensuring justice is done and can be seen to be done effectively and efficiently, and enabling people facing urgent legal issues to find a meaningful resolution (McLachlin 2019).

This is particularly why community-based approaches of legal aid are the ones most effective and the ones producing highly scalable results in providing access to justice for all. Community-based justice is most often served by civil society organizations, through various alternative forms that tend to combine professional legal services with community activism. This combination has shown exceptionally positive results since it includes both professional knowledge and grass-root outreach that create a comprehensive approach in addressing the issue directly and effectively.

[3]The data were obtained by Decision of the Ministry of Justice no. 19-2764/2020 dated 25.12.2020, upon a submitted Request for access to public information.

In the Republic of North Macedonia, two of the most commonly practiced forms of community-based access to justice approaches are (a) informal legal aid (outside of the Law on free legal aid) and (b) paralegals/paralegal aid.

(a) Informal Legal Aid - is the legal aid provided by civil society organizations that are not part of the formal Free Legal Aid system. This means it is not part of the official government program on free legal aid. It is financed and sustained by the CSOs themselves i.e. by the grants they receive from domestic or foreign donors, donations, or by innovative methods of self-financing such as social entrepreneurship.

This form of legal aid does not receive government funds or resources. It is provided by law graduates who have experience in the work of promotion of human rights and access to justice. The aid is often intended for marginalized communities such as smaller ethnic communities, single parents, rural communities, imprisoned persons, victims of domestic violence, people who use drugs, etc. It consists of legal advice, referral, filling documentation, and even personal assistance in conducting the legal and administrative procedures. The advantage of this legal aid form is that it is both individually and systemically oriented with every case being processed separately by implementing a specific person-tailored approach while identifying systemic obstacles that tend to address the collective realization of rights. As a result, positive outcomes are not only aimed at individual benefit but rather at the collective promotion of rights and systemic change. Also, CSOs tend to stay close to communities, continuously research and monitor the change of needs and issues, in that way adjusting their work and focus, thus the legal aid to the circumstances and real needs of citizens. However, being outside of the government program of free legal aid, makes this work highly exposed to sustainability issues and therefore somewhat insecure and inconsistent. As part of the CSO sector, fully dependent on its destiny, it is often collateral damage to the political schemes and conspiracy theories that are very often present in the region.

(b) Paralegals/Paralegal Aid – is a form of community-based work, that is community-based in its whole. It is a form of assistance provided by members of the community who do not have an official law degree but are trained for the first instance regarding the legal and administrative obstacles that people face. Their task is not to give legal aid but to refer and address people so that they do not wander from one institution to another not knowing what their right is and how to realize it, but to be able to walk the road confidently and with awareness. They are trained to identify the issues, to connect them with a certain area of an institution, and to explain to the people the exact procedure and how to complete it.

This form of community-based work is one of the most cost-effective worldwide and the one that managed to bring justice closer to all in many countries.

Unlike many countries worldwide, the Republic of North Macedonia is not recognizing this form of community work as an official tool for access to justice, so paralegals are left to the will of CSOs and their donors. There are no official statistics on how many are there in the country because the number is not constant, but they have managed to sustain through the years as a very useful tool in legal empowerment and access to justice work. One of the main reasons for this is they are part of the communities, people trust them and they have first-hand information on the issues people face. It is often the root to discover systemic obstacles and make systemic changes. Same as for the informal legal aid, paralegals come from and work in marginalized communities and are in the frontline of every justice battle people from this communities lead.

The COVID-19 pandemic brought to the surface many obstacles humanity is facing through the years, but this time they came back bigger than ever. Among other things, the pandemic is a justice crisis (NAMATI 2020). People lack basic access to administrative and legal services, they fight daily with exacerbated inequalities, and on top of that live in constant danger of either deadly virus or the other pandemic – rising poverty. In all of that, informal legal aid happened to be the brightest ray of hope for the least privileged.

Informal legal aid services are more flexible and accessible, they adapt to the new circumstances in real-time, thus provide services rapidly and effectively. Informal legal services providers working mainly on a grass-root level are not stuck in the bureaucratic machinery and therefore tend to solve issues faster and cheaper. For illustration, the number of provided services through informal legal and paralegal aid from only one CSO working in the municipalities Prilep, Krivogashtani, and Dolneni, for the period January-December 2020 is more than 1000 (LET STATION 2021, 4). In the time of the pandemic, citizens mainly seek informal legal aid in the field of social protection, employment, housing, and agriculture, while paralegals are called for help for the use of economic measures to deal with the crisis, education, health care, social protection and obtaining personal documentation (FOSM 2020).

However, being effective and efficient as much as possible, these community-based service is still standing on the 'informal' side of the legal aid pool. They are left to the sole support of the CSOs, the programs they develop, and the support they manage to get. Sustainability is more than an obvious issue, but it also pulls some other aside – development, human resources stability, and outreach.

CONCLUSION

There is no access to justice where citizens (especially marginalized groups) fear the system, see it as alien, and do not access it; where the justice system is financially inaccessible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system (USIP 2009, 7.8). No country has managed to develop the justice system so perfectly that it becomes available for every citizen in every situation. However, many of them are going that way and improving it all the time. The Republic of North Macedonia has made significant progress in the past two years and introduced important tools for improving access to justice for all. The new Law on free legal aid, the promotion of the tools, and many other associated activities are already giving positive results in confirmation of this effort. Of course, we should not fall into comfortable lethargy and say we are pleased with ourselves and we reached the maximum. A long road is yet to be walked, especially in the area of effective implementation, improving the results, and shaping the legal tools in a way that serves the citizens' best.

The results of the implementation of the Law on FLA are showing low awareness of its possibilities and are a clear sign that the tools it offers should be promoted more actively among citizens, with a special focus on vulnerable groups since it is aimed mostly at them. Even the best legal solutions are useless if not promoted properly when there is low awareness of the tools they offer and the advancement they introduce.

Another issue is the human resources and infrastructure capacity of the Ministry of Justice, the main holder of the implementation activities, that still need to be advanced to bring to life the legal solutions provided by the law. The lack of recognition and support of informal legal aid services and the positive results they give on the field is another sign that laws should be shaped to serve citizens and not the other way around. From Sierra Leone and Kenya in Africa, through the Asia Pacific region in China, Indonesia, and Nepal, all the way to Europe's Moldova, England, and the Netherlands, many countries worldwide have legally recognized paralegals or similar forms of community justice servers, thus made a significant step forward to bring the justice closer to all[4]. Our country should also consider embracing such effective tools and confirm that access to justice is not just a box we want to check on the list of priorities but a real vision of better quality of life for our citizens. Finally, we are analyzing the issue of justice not as a subjective impression of what is just and right, but as a systemic positive and user-friendly condition for the realization of human rights through the institutions of the system that are accessible and available for all. Therefore, it remains a commitment that needs to be further developed for it is a fundamental part of the ultimate principle of rule of law our society tends to achieve and withhold.

[4] For more information, please visit: https://namati.org/resources/community-paralegals-recognition-and-financing/

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DIGITAL SERVICES AS A TOOL FOR CREATING COMPETITIVE ADVANTAGE IN THE BANKING SECTOR IN NORTH MACEDONIA

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Abstract: *In the last few years participants of the banking sector in North Macedonia are facing big competition as a result of the increased innovations between these participants. The only way for banks to stay relevant with their operations is to create a sustainable competitive advantage. For an organization to hold out in a competitive environment, it needs to develop competitive strategies. One of the aspects of creating a competitive advantage in the banking sector is creating digital services. These services have a high impact on the banking sector and enable banks to have a competitive advantage in different manners. In addition to a theoretical approach to creating a competitive advantage in the banking sector, we conducted empirical research on how banks in North Macedonia create competitive advantage by offering digital services. This paper aims to describe the end-users attitude on digital banking services as well as the bank's strategies on creating a competitive advantage by offering digital banking services.*

Keywords: *Competitive Advantage; Competitive Strategies; Digital Banking Services*

INTRODUCTION

Competitive advantage is the value of the product or the service that an organization offers that customers value more compared to products or services from the competing offerings (Baltzan and Phillips 2010). The competitive power in the banking sector is represented by the behavior or the process of creating banking or alternative products to increase the market share (Hadi and Hmood 2020). Banks acquire more customers by offering quality products, by cost reduction, by using high technology, and by offering good treatment to their customers.

According to Louay Subhi Dahbour, "the organization must determine how it competes with competitors in the banking industry to achieve outstanding competitiveness" (Hadi and Hmood 2020, 28), while the author Jamal Dahsh Mohammed believes that "when banks compete with each other they are very much based on price, quality, flexibility, and delivery, which are dimensions of competitive banking advantage" (Mohammed 2017, 185-186).

Sustainable business models allow the banks to achieve a competitive advantage by increasing the brand reputation and by reducing costs (Nosratabadi *et al.* 2020). To achieve the sustainable competitive advantage of complex processes it is needed to manage from a transition to sustainability where the transition can be accomplished by offering innovative services, innovative approaches on delivering the services, and by forming new business partnerships (Freudenreich *et al.* 2019). According to this in the process from transition to sustainability strategies, the create value and cost leadership are recommended.

The essence of the competitive advantage is the company's attention on how to broaden the products on the market, the type of marketing strategy to be implemented, why customers should buy the company products, and other questions. Competitive advantage needs to be correlated with the company's competitive position and profitability in a long term (Ensign 2001). When creating a competitive advantage, companies generally have two choices: to create specialized products or implement the lowest costs. Choosing the strategy is part of the three generic strategies: managing expenses, differentiation, or focus, so companies can invest their resources to enable sustainable competitive advantage.

Managing the expenses as a strategy requires the company to implement better efficiency compared to the competition. The differentiation strategy asks that the company add more value to their customers compared to the company expenses. The focus strategy means that the company manages its expenses or differentiates in a segmented market. Choosing the right and successful strategy to implement requires knowledge about the expense structure of the company and the company's competitiveness. The authors Reed and De Fillipi (1990) acknowledged that competitive advantage is related to competencies developed within the company, while Hofer and

Schendel (1978) concluded that competitive advantage is a unique position that companies develop over their competitors through their resource allocation models. The value chain is a way of conceptualizing the activities that are needed to provide a product or service to consumers (Ensign 2001). The value chain can be used to explore the impact that each of the activities individually can have on differentiation and cost.

As part of building a competitive advantage, it is of particular importance to companies to innovate. The authors Abou-Moghly, Al Abdallah, and Al Muala (2012) researched the impact of innovation on creating a competitive advantage, i.e. on the four dimensions of competitive advantage, cost, quality, time, and flexibility. Their results show that innovation has a positive impact on time and that is the biggest impact of this dimension, with which the use of innovation in banks improves the leading time and time needed to develop or modify products and services. Despite the improvement of the lead time and improves time servicing customers and thereby improving the time in both types of innovation, innovation in product and process innovation.

In terms of quality, innovation also has a positive impact, and improving quality allows banks to compete in the market based on the features and specifications of their products and services. Innovation also affects costs by enabling banks to offer quality products and services at lower costs, while reducing operating costs. Flexibility as a fourth dimension of competitive advantage has a positive impact on the innovations applied by the bank in that innovative methods in processes and products allow them to adapt products and services to customer requirements, as well as to offer products and services in response to competition.

The internet has a great impact on the banking sector by allowing the banks to create a competitive advantage (Daniel 1999). Researchers agree that the internet allows the banks to achieve competitive advantage in various ways including cost reduction (Peppard 2000), strengthening brand image (Daniel and Storey 1997), improving service quality (Delvin 1995), and cross-sale of products (De Young 2001). From the bank's perspective, the main advantage of e-banking is the expense reduction in the workflow of the physical branches (Devlin and Yeung 2003).

From the bank client's perspective e-banking transaction costs are reduced (De Young 2001). Savings from the reduced costs come from the combined effects from the reduction and better utilization of workforce, equipment, and more economical usage of physical space and operative expenses. The author Robert Peterson (1997) recognized that the internet marketing implications should not be isolated from the rest of the business. The bank's brand needs to be correlated with the special products and services offered by the bank that is better compared to the competition. Banks that implement more sophisticated usage of the internet by offering better functionality, ease of usage, better security, and privacy control are more likely to achieve a better image. Internet's interactive nature allows for more personalized marketing offers, thus allowing the

clients additional value. It is also considered that the internet can be used as a potential marketing tool with an endpoint client connection, therefore enabling the banks to become client-focused and create potential value (Srirojanant and Thirkell 1998). A cross-sale of a wide spectrum of financial services can demand that the bank work in high volume in addition to a high level of financial expertise.

Santomero and Eckles (2000) pointed out that the real benefit from distributing more products is not just the efficiency but also the customer service which is a 'consumer economy' that allows for the banks' potential in creating and offering various products and services. By clients recognizing the comfort of using multiple products or services from the same bank, this would allow for a higher income for the bank.

Internet services can increase cross-sale opportunities such as credit card offerings, account overdraft, and insurance services while reducing expenses at the same time. After recognizing the elements of digital transformation, it is important to find out the problems facing digital transformation. In that context, the author Shubham Singhania (2018) emphasized that: "(1) A country requires an adequate level of infrastructure to adopt the technology and provide the necessary support for its growth and usage, and (2) Since the internet is an open-source of communication, privacy and security of data transferred over the network is susceptible to theft, unauthorized access and exploitation (…)" (p. 31).

All of the above perspectives on creating a competitive advantage in terms of creating more value for customers, with lower costs and greater flexibility are included in the digital services of banks and therefore the emphasis of this research is on the internet and digital services offered by banks for its customers.

DIGITAL SERVICES AS A TOOL FOR CREATING COMPETITIVE ADVANTAGE IN THE BANKING SECTOR IN NORTH MACEDONIA

As a result of the increased number of innovations in the banking sector, banks are faced with a big competition.

This research aims to determine the ways that banks create competitive advantage. To determine the real situation of creating a competitive advantage in North Macedonia, we conducted empirical research with accenting the digital (internet) services as a tool for creating a competitive advantage in the banking sector. The banking system in North Macedonia consists mainly of ten banks predominantly owned by foreign shareholders and four banks owned by domestic shareholders, and in terms of total revenues, the subsidiaries of foreign banks generate the highest revenues and have the largest share of 65.1 % in total revenue (NBRNM 2020). Table 1. presents the structure of the banking sector in North Macedonia according to the ownership structure and the revenues they generate and the percentage with which they participate in the total financial result.

Table 1: Structure of the Banks in North Macedonia and their Total Income (Source: NBRNM 2020).

Property Type	Number Of Banks	Total Revenue	Financial Result
Banks Predominantly Owned by Foreign Shareholders	10	17.420	72.6%
- subsidiaries of foreign banks	6	14.922	65.1%
Austria	2	2.611	6.2%
Bulgaria	1	379	0.4%
Greece	1	5.296	27.3%
Slovenia	1	4.479	22.0%
Tukey	1	2.156	9.2%
- other banks in predominantly foreign ownership	4	2.498	7.6%
Bulgaria	2	1.278	5.1%
Germany	1	918	1.9%
Switzerland	1	302	0.5%
Banks Predominantly Owned by Domestic Shareholders	4	6.158	27.4%
private property	3	6.046	26.9%
state property	1	112	0.5%
Total	**14**	**23.577**	**100%**

** The data in the table is presented in millions and percentages.*

We analyzed the three largest banks in North Macedonia (Komercijalna Banka AD Skopje, Stopanska Banka AD Skopje, and NLB Banka AD Skopje) in terms of their strategies and performance. The goal of the three largest banks in North Macedonia is to provide a higher level of service quality, to offer modern products, to be professionally supported by market-oriented, well-trained management and highly professional staff, adjusting to changes as a consequence of the modern environment through the offer of products and services that will be easily accessible with the help of modern distribution channels, as well as making a profit through efficiency and economy in operation. The success of the operation according to the three largest banks in the country is due to the implementation of high-quality standards in operation, modern information technology infrastructure, successful market strategy, as well as professional management.

Digital banking services come down to electronic banking and mobile banking which is a software application that is installed and used via mobile phone. Electronic banking provides the following services to users:

- Insight into the balance and turnover of accounts, cards, deposits, and loans at any time;
- Obtaining an electronic statement;

- Conversion from one currency to another;
- Ability to pay regular expenses;
- The ability for various payments to individuals and legal entities in the country;
- Ability to pay credit card and loan obligations;
- Opportunity for foreign currency payments;
- Recharge a prepaid account on a mobile phone;
- Change of limits for POS and ATM card transactions;
- Online loan application and other loan applications;
- Online credit card application;
- Online submission of complaints about card transactions;
- Locations of branches and ATMs.[1]

Mobile banking offers the following services to its users by using a software application:

- Insight into the situation and the turnover of the transaction accounts in Denar and foreign currency;
- Insight into the condition and turnover of credit cards;
- Insight into the condition and turnover of savings deposits;
- Insight into the condition of the approved loans;
- Calculator for loans, savings deposits, and purchase and sale of foreign currency
- Opening a transaction account;
- Execution of all payments such as internal transactions, overheads, and other payments to individuals and legal entities;
- Change of limit on ATM cash withdrawal cards, POS terminal payments, and internet payments;
- Purchase and sale of foreign currency (non-cash);
- Replenishment of credit for mobile phone;
- Locator of the nearest ATM or branch;
- Direct contact in the bank at any time;
- Payments on overdue liabilities for credit cards and credits;
- Receiving notification for payment card transactions and inflows and outflows from the transaction account;
- Foreign currency payment operations;
- Notification for inflow from abroad;
- Greater security when paying with PIN authentication or fingerprint;
- Ability to pay for contact to telephone directory;
- Opportunity to apply for a loan, and ability to update personal data.[2]

[1] Electronic banking services of the analyzed banks: Komercijalna Banka AD Skopje, Stopanska Banka AD Skopje, and NLB Banka AD Skopje.

The descriptive method of this paper aims to describe the situation in North Macedonia, on how users of banking services consider the competitive advantage by offering digital services together with the degree of how banks aspire to create that competitive advantage by using digital services. Data collection in the research is a crucial method for it to be optimally realized.

The surveying method was applied in this research, and the technique that was used is the online survey examination. An online questionnaire was created through Google Forms and it was transmitted to the respondents via e-mail and social networks. The purpose of this research is to find out whether through the internet banks in North Macedonia create a competitive advantage. The data collection methodology and optimal realization are of high importance. In our research, we conducted an online inquiry method by using Google Forms. The questionnaire was distributed by e-mail and social media. The respondents are selected by purposive choice and represent a target sample, respectively users of banking services that are considered appropriate for the sample to be representative. The questionnaire contained 10 questions of a closed type with predetermined answers. The questions address the benefits of using internet services, the ease of usage of the offered services, and whether the banks' internet service offerings make it more competitive compared to the other banks. The questionnaire was answered by 42 respondents and the answers were analyzed and processed in SPSS to determine the connection between the internet services offered by the banks and their competitive advantage.

Addressing the respondents' age groups, 52% were aged 20 to 30, 33% were aged 31 to 40, 10% were 41 to 50 and only 5% were aged above 50 years.

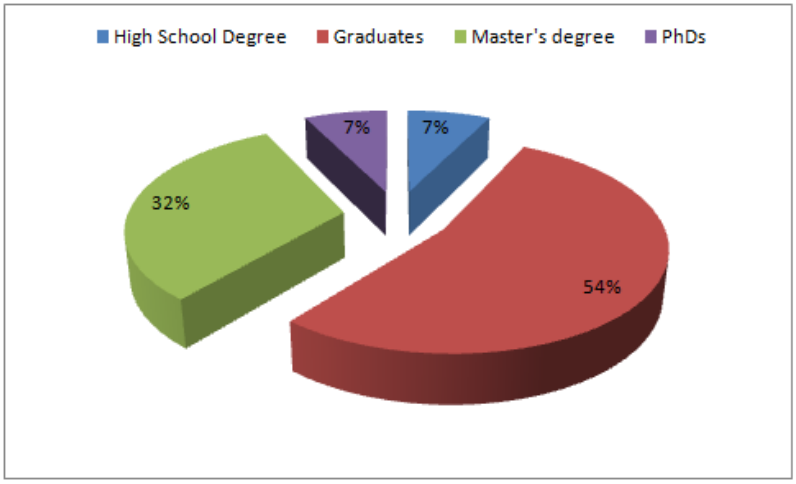

Figure 1: Education Specifics

[2] Mobile banking services of the analyzed banks: Komercijalna Banka AD Skopje, Stopanska Banka AD Skopje, and NLB Banka AD Skopje.

Most of the answers came from females (71%), 22 were graduates, 13 have master's degrees, 3 are PhDs, and 3 have high school degrees, thus allowing us to have answers from profiles with various degrees of education.

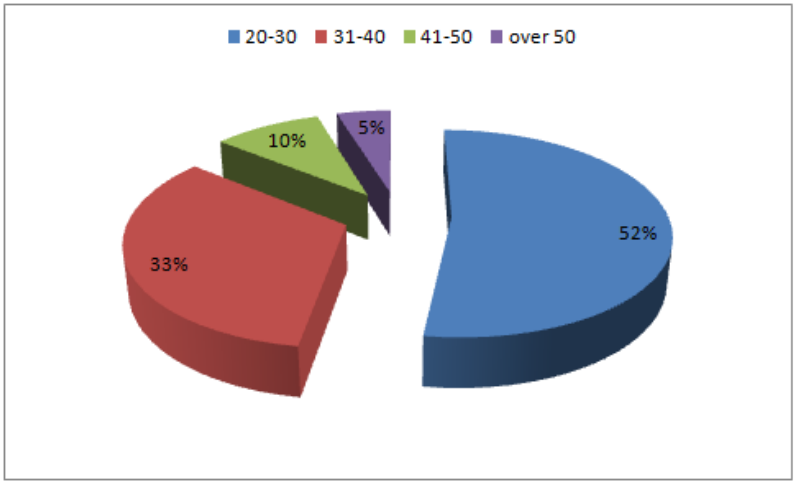

Figure 2: The Respondents' Age

Considering the question 'Do you use banking services on the internet?' we received 35 positive (83%) answers, therefore confirming the usage of internet banking services by the respondents and contributing to the credibility of the following questions.

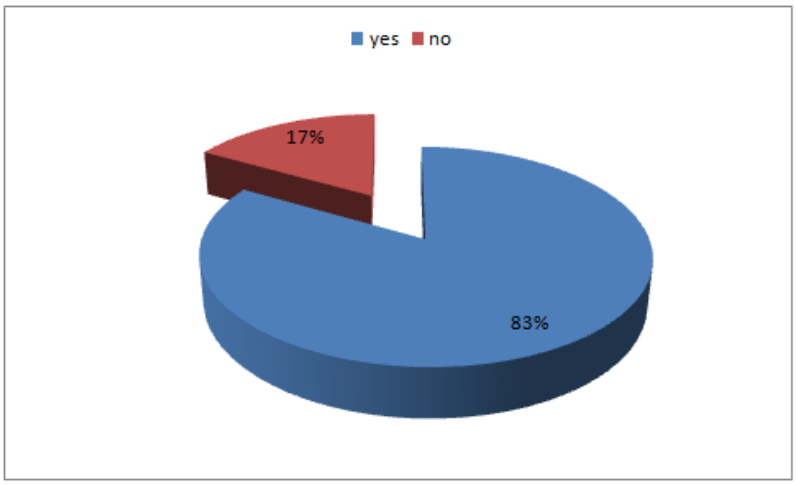

Figure 3: The Usage of Internet Banking Services

Taking into account the interactive nature of the internet and the ability to create personalized marketing offers as an additional value, the second question was: 'Does your bank enable personalized banking offers?'.

We received a positive answer from 86% of the respondents and conclude that banks in North Macedonia are client-focused and aim to create additional value for their clients.

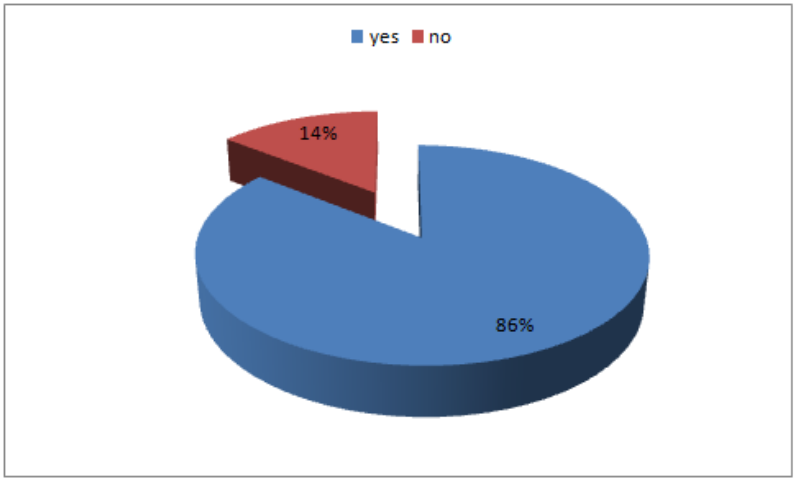

Figure 4: Enabling Personalized Banking Offers

One of the main methods in creating a competitive advantage that banks use is to lower costs for internet services. That is why our next question addressed: 'Are online transactions cost less than transactions executed in physical branch banks?'. With this question, we aimed to identify whether banks in North Macedonia strive to gain a competitive advantage by using internet services. We received a positive answer from 81% of the respondents, thus confirming that competitive advantage is created by stimulating internet transactions by applying lower costs.

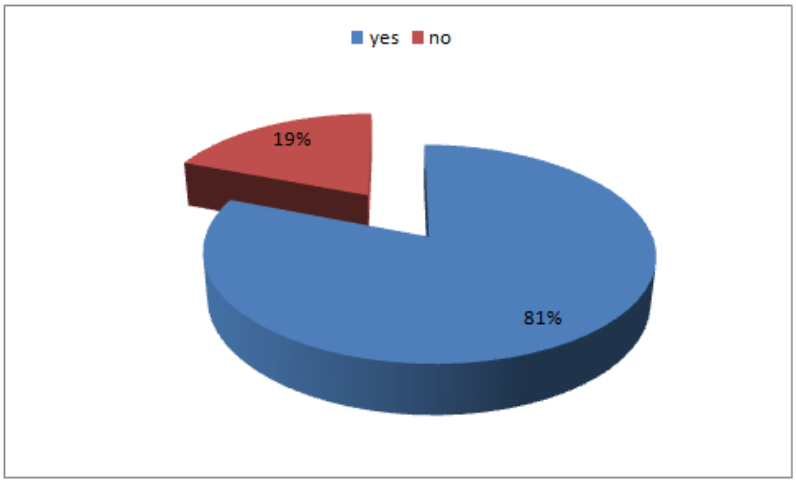

Figure 5: Lower Internet Expenses

The ease of usage of e-banking is directly correlated with the creation and internet implementation of a bank's image. By setting the question: 'Are the e-banking services easy to use?', we aimed to discover how easy our e-banking services to use by the end-users as a key factor for the usage frequency for these services. Analyzing the answers we discovered that most of the respondents (95%) find these services easy to use and just 2 of the respondents answered that they don't find these services easy to use. This allows us to conclude that banks in North Macedonia are making sophisticated use of the internet and enable e-banking services that are easy to use.

Creating and implementing a bank's image is not just done by making the e-banking services easy to use but also making them secure and implementing privacy controls. To determine our respondents' perception we asked: 'Does your bank allows controls for security and privacy for online transactions?'. Most of the respondents (95%) consider that their banks offer them security and privacy controls resulting in a better image for their banks.

Having into consideration that a bank's branding need to be connected with products and services that the bank offers and that they are better compared to the banks' competition we asked the following question: 'Are electronic services offered by your bank are better than other banks in North Macedonia?'. This question helped us determine if clients believe that their bank has better services compared to other banks.

From the questionnaire, we concluded that although many of the respondents believe that their bank offers better electronic services, a significant number of respondents (39%) do not believe that they are offered the best electronic services. This allows us to conclude that banks to strengthen their brand need to focus on increasing the quality of electronic services that they offer to their clients.

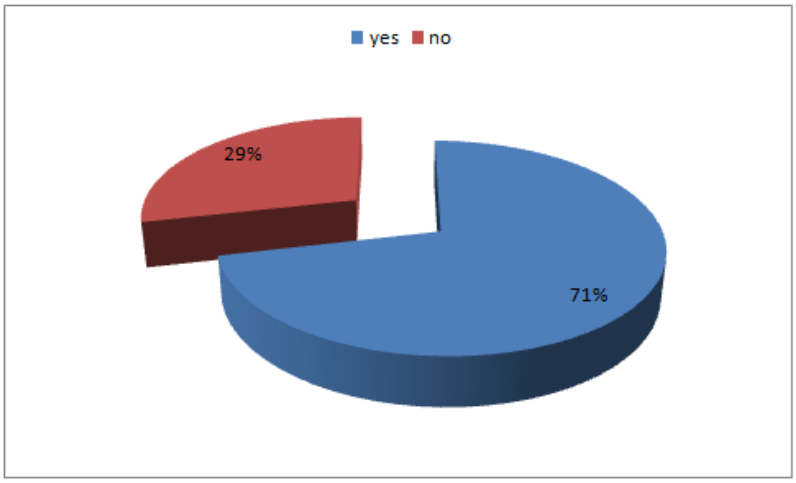

Figure 6: Better Electronic Services Compared to Other Banks

As a next question, we asked: 'Are the services of e-banking offered by your bank make your bank more competitive in comparison with other banks in North Macedonia?'. The answers to this question helped us identify how much clients think that e-banking contributes to bigger competitiveness. On this question, 31 respondents (78%) gave a positive answer compared to 11 (26%) that consider that offering e-banking services does not make a bank more competitive from the rest of the banks in North Macedonia. That is why we can conclude that offering e-banking services can make a competitive advantage for banks.

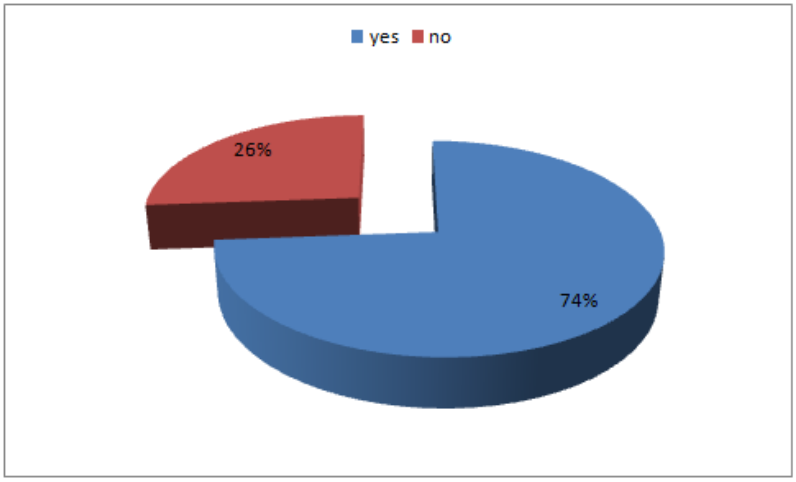

Figure 7: The E-Banking and Competitiveness

Table 2. represents the Pearson Correlation from the answers to the previous two questions, where the independent variable is taken from the question: 'Are electronic services offered by your bank are better than other banks in North Macedonia?' and as the dependent variable the answers from the question: 'Are the services of e-banking offered by your bank make your bank more competitive in comparison with other banks in North Macedonia?'.

Table 2: Pearson Linear Correlation (Source: Pallant 2009).

		Better Electronic Services	Larger Competitiveness
Better Electronic Services	Pearson Correlation	1	.648**
	Sig. (2-tailed)		.000
	N	42	42
Larger Competitiveness	Pearson Correlation	.648**	1
	Sig. (2-tailed)	.000	
	N	42	42

We used the following scheme to determine the correlation of the variables (Pallant 2009):

Low = 0.10 – 0.29
Medium = 0.30 – 0.49
High = 0.50 – 1.0.

Pearson's variable correlation is 0.648 or r=0.6 which determines a high or strong correlation between the variables. This correlation shows that as the quality of electronic services increases the banks' competitive advantage increases as well. Furthermore, the determination coefficient shows the amount of distortion of the dependent variable that is explained by the independent variable. In this correlation, the determination coefficient is 0.419 or 41.9% from the variance of the one variable explained by the other variable. This data shows that the electronic services that banks offer explain 41.9% of the creation of the banks' competitive advantage. The statistical meaning is determined by Sig which in this case is 0.000 or $p<0.05$, making it statistically relevant.

CONCLUSION

In creating a competitive advantage in the banking sector, digital services undoubtedly have a significant impact on the banking sector and provide a competitive advantage to banks by reducing costs, strengthening the brand, improving quality and service, and cross-selling. A digital service of banks in North Macedonia comes down to electronic banking and mobile banking which is a software application that is installed and used via mobile phone.

From this research, we can conclude that banks in North Macedonia are client-focused, enable personalized banking services and enable internet transactions that have lower costs compared to transactions that are made at their physical branches. Their brand image is implemented on the internet by making their e-banking services easy to use while maintaining the security and privacy controls, therefore concluding that banks use sophisticated technology.

From the questionnaire analysis, we can also conclude that banks in North Macedonia need to focus on increasing the quality of the electronic services that they offer. That way banks can strengthen their brand and the banks' image, therefore, increase the competition in the banking sector. From the correlation from the answers in the questionnaire, we can conclude that increasing the quality of electronic services also increases the banks' competitiveness.

Given that this research covers exclusively the digital services of the bank, for future research we recommend creating a business model that will cover the different perspectives for creating a competitive advantage in the banking sector.

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LEGAL POSITIVISM: AN OBSTACLE IN THE PROCESS OF STRENGTHENING THE RULE OF LAW IN BOSNIA AND HERZEGOVINA

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Abstract: *So far, a legal positivism issue in the process of strengthening the rule of law in Bosnia and Herzegovina was not recognized by the wider academic community. The expert report on rule of law issues in Bosnia and Herzegovina addresses, for the first time, legal positivism as a part of the process of strengthening the rule of law in Bosnia and Herzegovina. This paper is an attempt to gather, and in one place present all the advantages offered by the constitutional system of Bosnia and Herzegovina that were not used by its institutions due to the application and implementation of legal positivism. This paper demonstrates misguided reform policies whose sole purpose was the strengthening of the rule of law in Bosnia and Herzegovina but turned to be just superficial adjustments that were unsuccessful. The paper argues the necessity of legal education reform as the key element in the process of strengthening the rule of law. Legal education reform is possible through the reduction of legal positivism impact on future lawyers, and this will be accomplished by the change in the paradigm of legal understanding among future lawyers who will make important decisions on the rule of law in Bosnia and Herzegovina. Two strategic objectives must be met in terms of legal education reform for the strengthening of the rule of law: the development of a critical stance towards legal provisions in force and training in the use of international instruments during the decision-making process.*

Keywords: *Bosnia and Herzegovina; Legal Positivism; Rule of Law; Constitution; Legal Education*

INTRODUCTION

Formally, Bosnia and Herzegovina (hereinafter referred to as 'BiH') is a country with a constitution that supports the modern concept of the rule of law. No other constitution in the world protects human rights to such an extent as the Constitution of BiH (Chandler 2000). In this connection, the Preamble of the Constitution of BiH (1995) states: "Inspired by the Universal Declaration of Human Rights, the International Covenants on Civil and Political Rights and Economic, Social, and Cultural Rights, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities, as well as other human rights instruments". It is evident from the preamble of the Constitution of BiH that human rights are listed as an inspiration for the enactment of the Constitution. Article I (2) of the Constitution states that Bosnia and Herzegovina shall operate under the rule of law and with free and democratic elections. The modern concept of the rule of law requires two criteria: The first is the existence of legal supremacy (constitutional state) and the second criterion is that the legal supremacy meets the criteria for internationally recognized human rights.

The Constitution of BiH formally meets both criteria. Legal supremacy is evident in the existence of the Constitutional Court that has the authority to declare unconstitutional acts and repeal all the acts that are against the Constitution of BiH (Išeric 2019). Also, the Constitution of BiH supports the protection of internationally recognized human rights. Therefore, Article II (2) of the Constitution of BiH states that the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as 'ECHR') shall apply directly and have priority over all other laws. Article II (6) of the Constitution of BiH states that all institutions in BiH, either at the state or entity level, shall apply or conform to the human rights referred to in ECHR. Annex I of the Constitution of BiH lists 15 additional human rights agreements to be applied in BiH,[1] and in Article II(7) of the Constitution of BiH, it is specified that BiH shall remain or become a party to the international agreements listed in Annex I to the Constitution.

[1]Annex I lists the following international agreements: 1. 1948 Convention on the Prevention and Punishment of the Crime of Genocide; 2. 1949 Geneva Conventions I-IV on the Protection of the Victims of War, and the 1977 Geneva Protocols I-II thereto; 3. 1951 Convention relating to the Status of Refugees and the 1966 Protocol thereto; 4. 1957 Convention on the Nationality of Married Women; 5. 1961 Convention on the Reduction of Statelessness; 6. 1965 International Convention on the Elimination of All Forms of Racial Discrimination; 7. 1966 International Covenant on Civil and Political Rights and the 1966 and 1989 Optional Protocols thereto; 8. 1966 Covenant on Economic, Social and Cultural Rights; 9. 1979 Convention on the Elimination of All Forms of Discrimination against Women; 10. 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; 11. 1987 European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; 12. 1989 Convention on the Rights of the Child; 13. 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; 14. 1992 European Charter for Regional or Minority Languages; 15. 1994 Framework Convention for the Protection of National Minorities.

Moreover, the Constitution of BiH, as a distinctly one-tier model constitution, supports the interference from the international law on the internal BiH system, and apart from the constitutional provisions aforementioned, Article III(3) of the Constitution states that: "(...) The general principles of international law shall be an integral part of the law of Bosnia and Herzegovina and the Entities" (Constitution of BiH 1995). Whereas, Article VI(3)(c) of the Constitution of BiH states that the Constitutional Court shall have jurisdiction over issues referred by any court in BiH concerning whether a law is compatible with the Constitution. Also, the Constitutional Court assesses the compatibility of the law with the European Convention for Human Rights and the general rules of public international law. The initial statement, which asserts that the constitutional system in BiH is formally considered unique in terms of human rights protection, is fully justified and responds to the above-mentioned arguments.

However, the Constitution of BiH contains provisions that are not in compliance with human rights standards, as was ruled by the European Court of Human Rights (hereinafter referred to as 'ECtHR') in judgments in the Sejdic and Finci, Zornic, and Pilav cases. Although those are three different judgments, the core of these judgments is that the current model of constituent peoples in BiH conflicts with the modern concept of the rule of law and human rights. So, the current model of constituency enables only the members of the constituent peoples to stand for elections to the Presidency and the House of Peoples of Bosnia and Herzegovina. Another issue here is the fact that members of constituent peoples have limitations to their candidacy, meaning that Serbs who are citizens of the Federation are not entitled to nomination to the Presidency as well as Bosniak and Croat citizens of the Republic of Srpska (Begic 2013). In all of this, the largest negative impact on democratic processes in BiH is the position of the House of Peoples of BiH. This exclusive legislature body is reserved only for the members of constituent peoples and it participates in the adoption of legislation even though their members are elected indirectly. In that respect, non-constituent citizens, whether being minorities or just citizens of BiH, are politically less valuable than constituent peoples. Regardless of the will of a majority in the democratically elected House of Representatives of BiH, without the consent of the House of Peoples, such will does not have legal consequences in terms of law adoption. The ECtHR recognized such systemic discrimination, but BiH did not take any steps towards eliminating such discrimination although it has passed more than 10 years since the ECtHR ruling in the Sejdic-Finci case. Of course, this is not the only problem in BiH in terms of human rights violations, but certainly is one of the biggest because it is systematic and to resolve the problem, it is necessary to change the whole system which is based on the concept of the constituency of peoples. This paper does not discuss the enforcement of the judgments of the ECtHR in the legal system of BiH, but rather the utilization of the current constitutional model in BiH. The current constitutional model in BiH offers a possibility for the strengthening of the rule of law, but in practice, the rule of law in BiH stagnates,

i.e. the strengthening does not take place. One of the problems that prevent the strengthening of the rule of law in BiH, and yet the most obscure one, is legal positivism and formalism.

LEGAL POSITIVISM IN BOSNIAN LEGAL SYSTEM

Legal positivism in BiH reaches back to former Yugoslavia because BiH as a former Yugoslav republic followed legal trends that Yugoslavia used as a reference. After World War II and the establishment of Yugoslavia on socialist and Marxist principles, legal formalism was retained within Yugoslavia. In this legal culture, judges were agents of the mechanical application of the legal text to facts. Legal syllogism was the main method of the decision-making process, where deciding cases on the formal ground was more important rather than merits. According to Ivan Padjen, after 1948 legal thought was developed along two lines, Marxist inspired and based on Hans Kelsen's theory.

According to Marxist theory, the law is a product of bourgeoisie society, and therefore the whole Marxist theory has a negative view of law as a product of bourgeoisie society (Karcic 2020). On the other hand, Hans Kelsen who promoted ideas of legal positivism argued against constitutions that contain general principles such as equity, morality as well as human rights, and these principles, in his view, could thereby lead to excessive interpretation by the judges and in that case, the judges would become the lawmakers (Sweet 2002). In that manner courts in ex-Yugoslavia were only apparatuses for exercising rights prescribed by the state. According to Degan, it is unknown whether any court in ex-Yugoslavia in its decision referred to any international convention or international customs related to human rights, although former Yugoslavia was a member state of most international treaties on human rights in force at that time (Degan 2011). The most influential Yugoslav theoretician of law, Radomir Lukic whose views were similar to Soviet theory of law in his definition of the law states: "Totality of general norms sanctioned by the state which preserve a way of production in the interest of the ruling class" (Karcic 2020). Therefore, Marxist ideology influenced the development of the Yugoslav legal system which was used as a tool for maintaining political elites in power, while at the same time legal positivism influenced judicial decision-making in terms of strict law application the courts without the possibility of using principles such as human rights. In that way, laws adopted by the state are the only relevant for the citizens, and by extension, the state was the only subject allowed to create rights and obligations for its citizens. Elements of the socialist legal culture are still present in the Bosnian legal system, less in form but more in the minds of individuals who make decisions important for the Bosnian legal system. That is not surprising considering that individuals in charge of legal tasks in former Yugoslavia,

continued working in a new political system without a change in their perspective on the role of law and state.

Alan Uzelac lists the following features of the survived socialist legal tradition in the former Yugoslavia: the instrumentalist approach to law, that is, a legal process is a tool for the protection of the interest of political elites; fear of decision-making by the judges; various formal procedural issues which were always welcome as a means to dismiss a case on formal grounds; and low, but the comfortable status of judges whose position was seen as clerical rather than elite and who were elected based on political merit to the Communist Party (Karcic 2020). Certainly, these elements of the socialist legal culture can be seen in the modern BH legal system, but in a different shape. For example, in the modern BH legal system judiciary is still seen as a clerical position, and judges are tasked with quick and efficient decision-making without any creativity, so the fact that judges still do not belong to the highest elites speaks volumes. In public discourse, the word elite is used to denote political elite, whereas the judiciary, in many respects, is not even considered an authority.

Another issue is also a lack of independence and autonomy of the judiciary power from the other two branches, except nowadays multiple political parties in power interfere with the autonomy of judicial authority compared to the Yugoslav legal system where only the Communist Party was in power. It is unrealistic to expect the strengthening of the rule of law with the existence of such judicial authority which is afraid to make heroic decisions, does not have a status of elite, politically is dependent, and at the same time burdened with a strict form of complicated procedures.

LEGAL POSITIVISM AS THE MAIN OBSTACLE FOR THE RULE OF LAW STRENGTHENING

The experts' report on rule of law issues in Bosnia and Herzegovina (hereinafter referred as: Report), known as 'Priebe Report', states that in many areas, legislation in BiH is in line with European and other international standards, but there is a considerable gap between legislation and practice, and the positivist and formalistic behavior of many officeholders often appears as a real obstacle to proper implementation of such standards. The Report states that civil justice proceedings are too long and formalistic, which makes the judicial system less efficient and leads to infringement of the right to a fair trial, where the evidence of such violations has been found in many cases by the BiH Constitutional Court (Expert Report on Rule of Law issues in BiH 2019). There are some systemic errors in the Constitution of BiH, which was pointed by the ECtHR, but the Constitution of BiH allows the creative role of judicial authority and in those terms, the judiciary could shape political processes in BiH. This creative role was not only given to the Constitutional Court of BiH, which already used this possibility in many cases (Ademovic, *et al.* 2012) but to the judicial authority in the

whole, i.e. courts in BiH at all levels. Article VI(3)(c) of the Constitution of BiH states that any court in BiH concerned whether a law, on whose validity its decision depends, is compatible with the Constitution, the ECHR, or with the laws of BiH, and a general rule of public international law, can refer such law to the Constitutional Court of BiH. Unfortunately, it is evident from the statistics available on the Court's official website that none of the ordinary courts made use of this possibility. From the adoption of the Constitution until the writing of this paper, ordinary courts referred to laws for the review of their constitutionality only in 37 instances (Constitutional Court of BiH). In that way, the Constitutional Court in BiH is immobilized in terms of its inability to make decisions regarding the constitutionality or non-constitutionality of a certain law since ordinary courts, which should be very informed with the constitutionality of the specific law, do not exercise the right to refer it to the Constitutional Court of BiH. As a result, some laws violate human rights guaranteed by the Constitution of BiH, but the Constitutional Court of BiH cannot pass judgments on these issues due to the misunderstood role of ordinary courts in the legal system of BiH. So in those terms, ordinary courts do not have a role provided in the modern concept of the rule of law and supported by the Constitution of BiH, which is primarily the protection of individuals and not a strict application of the law without taking into consideration how these laws violate the rights of individuals. Judicial authority does not exist merely to execute legal provisions made by executive and legislative branches, but to guide political processes by referring unconstitutional laws in terms of human rights violations guaranteed by the Constitution, to the Constitutional Court of BiH for the review of their constitutionality and in that way restricted the power of executive and legislative branches. Quite the opposite, ordinary courts in BiH preserved their role from the previous political system by implementing blindly legal provisions and in that way weakening the possibility for the strengthening of modern rule of law. As already stated, courts act as bureaucratic institutions concerned more with meeting the set number of passed judgments rather than satisfying justice and protection of human rights.

STRENGTHENING THE RULE OF LAW REFORM

As it was previously stated, the ECtHR established that the Constitution of BiH contains discriminatory provisions, but if we exclude this fact and complicated decision-making procedure in state legislative bodies, the Constitution of BiH represents a modern constitution which to a great extent protects human rights. As it was stated in the Report, possibilities offered by the Constitution are not used due to a formal understanding of the law by the individuals who interpret and apply the law in the Bosnian legal system. In those terms, the question arises as to what changes must be implemented to strengthen the rule of law in BiH. BiH already took some steps in that direction, and for that purpose adopted the Reform Agenda for Bosnia and Herzegovina

2015–2018 (hereinafter referred to as 'Reform agenda') which states that there is a need to strengthen the rule of law which must be built on a foundation of concrete progress in the fight against organized crime, terrorism, and corruption. It further states that judiciary reform strategy will be adopted for the establishment of an effective system, enhancing professionalism among judges, prescribing objective criteria for appointments of judges, and prevention of corruption and conflict of interest within institutions in BiH (Reform agenda 2015). According to the rule of law index for 2020, conducted by the World Justice Project, BiH had the lowest results in Absence of Corruption factor (Bock et al. 2020). This is an indicator that BiH is applying the wrong strategy for strengthening the rule of law. In one part of the Reform agenda, it is stated that: "(...) professionalism and integrity will be enhanced through prescribing objective criteria for appointments of members of the judiciary and the adoption of integrity measures throughout the judiciary in BiH; and disciplinary accountability of the members of the judiciary will be reinforced by adopting new rules for disciplinary proceedings and introducing new disciplinary measures" (Reform agenda).

This shows all misconceptions regarding the strategy needed to strengthen the rule of law since further standardization and sanction prescriptions will not lead to strengthening the rule of law. The legal system in BiH, as already mentioned, needs a change in the paradigm of legal understanding, and not much was done in that area. The obsolete legal education system, and in particular the education of judicial office holders, does not contribute to the rule of law. One of the conditions for carrying out judicial duties is passing the bar exam, a written and an oral part, with questions related to criminal law, civil law, family law, labor law, commercial law, administrative law, constitutional system, and organization of judiciary in BiH. We can see that candidates are expected to show knowledge in almost all areas of positive legal branches, whereas, according to Fikret Karcic, there is no single area that would educate a candidate on the 'Law and Society' approach, which in turn would make future members of judiciary critical towards the existing legal provisions (Karcic 2020). So, the strengthening rule of law reform, without substantial changes in the education of lawyers who apply and interpret the law, is impossible and in BiH not much was done in those terms. The constitutional system in BiH demands from the judiciary to be extensive and creative during law interpretation and application, but current judicial authority uses legal formalism and positivism in law interpretation and application, and one of the reasons is the education of judicial office holders, which is not following the demands of the modern rule of law concept. Current legal education is not following the demands of rule of law because, during their education, lawyers are taught how to apply legal provisions and not how to critically observe them. Without critical interpretation of the law, it is impossible to strengthen the rule of law. The strengthening of rule of law in BiH should start from additional standardization towards utilization of the current constitutional legal order, which undoubtedly provides the opportunity to strengthen

the rule of law. In that regard, BiH missed the opportunity to take one radical, but necessary measure and that is to use the Czech Republic model, where the Constitutional Court prohibited all individuals that performed public duties in the communist system, to perform public duties in the new political system (Sadurski 2014).

Because the Bosnian legal community, from courts to faculties, is dominated by lawyers who have a formalistic approach to legal interpretation, such decisions from this point of view would be quite understandable were it made after the entry into force of the Constitution of BiH. No matter how much the current Constitution of BiH is following the modern rule of law concept, in which individual rights take priority over the state, such concept cannot be utilized in BiH as long as the legal community is dominated by individuals educated in previous legal education, where the state comes first and a strict low application is imperative.

LEGAL EDUCATION REFORM WITH THE AIM OF STRENGTHENING THE RULE OF LAW

Legal education reform, as discussed above, is a necessary element in strengthening the rule of law in BiH. The question remains, in which direction such reform should take place. Most of the public criticism regarding legal education in BiH was related to the unpreparedness of the law graduates to work in their professional branch, i.e. the absence of sufficient practical knowledge. However, such a problem is technical, and solving it does not require major changes but handling this problem still does not resolve the absence of rule of law. To strengthen the rule of law, it is necessary to create a critical interpretation of the law in force among future legal minds. Bar exam reform is also necessary, so it shifts from being only an assessment of knowledge in positive legal branches into an exam that would demand a 'deeper' understanding of legal norms, their purpose, and effects to create a critical interpretation of legal provisions in force among future lawyers. Also, it is necessary to focus more on the education of lawyers in the areas of the rule of law, human rights, justice, economic implications of legal norm applications, etc. Having that in mind, legal education reform should have two key strategic goals for strengthening the rule of law. The first goal of education is to create a judicial elite that would be the counterpart of the political elite, not a subordinate. Of course, such a goal is not achievable only through education, however, education plays a vital role in preparing future judges and prosecutors that would serve the citizens and not the state or the political elite in power. Future judges should be educated as individuals who would direct political processes and not as executors of legislation adopted by executive and legislative branches. To achieve that, it is necessary to develop a critical approach toward legal provisions because legal positivism influenced in creating the awareness of untouchable legal provisions, namely the necessity of their application.

To strengthen the rule of law, it is necessary to create a true judicial elite which will be a counterpart to the political elite together with a judge training for the use of modern instruments in decision-making, and not only in the Constitutional Court of BiH or constitutional courts of the Entities but also in ordinary courts and in that way fulfill the obligation from the Constitution of BiH regarding the direct application of ECHR in all institutions in BiH. That way legal education reform should refer to the creation of a real judicial elite and an increase in usage of international instruments, specifically the ECHR, by the ordinary courts. Undoubtedly, the development of a critical stance towards legal provisions in force would result in a larger number of demands for the review of decisions of ordinary courts for their constitutionality, which at the moment is not the case, as we have seen a small number of constitutional reviews petitioned to the Constitutional Court of BiH.

How to reform legal education in Bosnia and Herzegovina?

The reform of education of future judges and prosecutors should reflect on the change of how the judicial state examination is taken. Currently, this examination in BiH contains the obligation of taking the exams on positive law, including civil law, criminal law, constitutional law, family law, labor law, commercial law, and constitutional law. We get the impression, confirmed in practice, that the judicial state examination prepares future judicial officials for a mechanical implementation of legal norms, but we should also note that the system of preparing and taking the judicial state examination is itself very formal and positivist and future judicial officials are prepared only for the implementation of norms, not for a critical view of the norms of positive law. Therefore, we pose the question of how to improve the current model of education of future judicial officials? Firstly, as already mentioned, apart from preparing future judicial officials to implement legal norms, they should be prepared to be critical of these norms. Fikret Karcic stated that a separate course should be introduced which will tackle the relationship of law and society, which should develop a critical attitude of judges toward the norms implemented in practice (Karcic 2020). Moreover, a more detailed study of international human rights is necessary, because it is strange and paradoxical that in the constitutional system, which offers the widest protection of human rights in the world, future judicial officials are not trained to implement international mechanisms for the protection of human rights. This is why a separate course of international human rights should be introduced to adequately and comprehensively trains judges to implement international mechanisms to protect human rights when making decisions. Currently, the judicial state examination only briefly reflects on human rights as part of the course of constitutional law, which certainly is not enough considering that the Constitution of BiH is intertwined with human rights. Such reform of the judicial state examination could certainly yield results in the long term, but there is a problem of what

to do with the current judicial officials who are deeply rooted in the old education system which, as already stated, is formalistic and positivist.

BiH has a judicial officials training system established at the level of the Federation of Bosnia and Herzegovina named Public Institution Centre for Judicial and Prosecutorial Training of the Federation of BiH which organizes various training, including those about the implementation of human rights during court decision-making. In practice, the main problem of the education of professional judicial officials is the abstraction of new knowledge, and educators find it difficult to impose new concepts or new methods on judicial officials who already have a professional career (Murtezic and Trlin 2018). In this regard, eliminating the positivist approach to the implementation of legal norms, in their full capacity, by the current judicial officials is impossible. Small steps forward are possible, but new opinions cannot be imposed on professionals. This is why it is very important to direct new generations of future judicial officials toward a modern approach of the implementation of legal norms, who will develop a critical attitude toward legal norms, both in the context of human rights and social implications of the implementation of legal norms. Such reform is important to prepare future judges and prosecutors to make decisions in line with a modern concept of the rule of law because we can see that professional judges and prosecutors have difficulties changing their opinions. Therefore, training before assuming the judicial position is crucial for capacitating future judges and prosecutors to harmonize their actions with the modern concept of the rule of law. The reform of the judicial state examination can achieve that purpose because it is a step toward the qualification for future judicial officials once they graduate from law school.

CONCLUSION

Legal positivism and formalism represent one of the major obstacles to strengthening the rule of law. Not much is being done to resolve this issue since it is not recognized by the wider academic community, nor the political elite which is formally committed to strengthening the rule of law. The Report on the subject of legal positivism and formalism should provide an insight into the work of Bosnian institutions. Certainly, the problem is the fact that the work of the institution is based on procedures that are generally adopted to serve the state and not the citizens, and to strengthen the rule of law this is one of the things that need to be changed. Legal education reform is a necessary condition for the removal of the dominant positivist and a formalistic approach to legal interpretation and application. Legal education reform, from faculties to bar exams, should above all reflect in the change of legal paradigm, and the positivist view of law as a state's tool for governing proceedings and maintaining ruling political elite in power. Also, it is necessary to view the law following the modern rule of law concept, which is as a tool for limiting the state power which will serve the citizens and

not the state. Undoubtedly the change in the paradigm of legal understanding would lead to the introduction of new judges and lawyers adapted to the critical view of legal provisions in force, which would result in strengthening the rule of law and constitutional state. 

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THE IMPACT OF GLOBALIZATION AND THE INTERCONNECTEDNESS WITH THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT BETWEEN CANADA AND THE EUROPEAN UNION

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Abstract: *Elimination of the trade barriers and stimulation of business activity through trade liberalization led to the expansion in the field of the global economy. There are plentiful hesitations about who gains the highest benefit from free trade, especially when it comes to the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union. Analogously, the previous mention guides to the dilemma about the trade negotiations and their position in the same agreement in which are the labor standards. Additionally, trade liberalization has influenced the creation of a close link connection between trade, labor, and globalization. This paper focuses on the effects of globalization and trade liberalization with their connection apropos the provisions from CETA; especially with an emphasis on Chapter 23: 'Trade and Labour'.*

Keywords: *Comprehensive Economic and Trade Agreement; Globalization; Labor Mobility; Labor Standards; Trade Liberalization*

INTRODUCTION

Globalization has plenty of significant effects and implications in the society and business practice, but the positive effect of globalization can't be allowed to keep under wraps the negative repercussions in the process of trade liberalization, including the open issue of the criteria based on which the analyzes are made that exclude the side effects in the whole process. The wide number of involved countries as contracting parties in the Comprehensive Economic and Trade Agreement (CETA) with Canada provides an opportunity for contrastive consequences due to the different national legal systems and the establishment of new challenges in the international trade policy.

CETA as an agreement that is promoting the stimulation of the economic activity and social development, helping the release of customs taxes, and supporting the sustainable development in the countries is one of the most exceptional trade agreements that is ever concluded, having every intention of CETA's scope. There is no doubt that CETA's intention to provide regulation including a variety of fields is comprehensive, but as a primarily economic agreement – the scope is a stimulus to reverse the real impact on the quality of employment provided in CETA towards trade liberalization and labor mobility. Considering the previous mention, arrangement the trade negotiations in the same agreement as the employment and labor standards exemplifies a tricky approach. Trade liberalization has made successful the free movement of people, capital, and goods, but that doesn't change the possibility that free trade creates unemployment.

Also, when analyzing CETA, the contracting parties didn't inform the civil society about the negotiation process and didn't consult with the business societies, which in this case made the absence of public debates due to the protections of the labor rights and labor standards very questionable are de facto the workers under CETA provisions have economic and social benefits versus the corporations in free-market conditions. Moreover, the previous mention also made the implementation process ambiguous given the positive role of CETA in reducing global unemployment and the strength of workers' rights protection and the upholding of high labor standards. With this paper using the research deduction method starting from the general point to a more specific result, I want to contribute to the topic of who benefits more from trade liberalization and how foreign investors challenge the governments of other countries.

THE LINK BETWEEN GLOBALIZATION, TRADE, AND LABOR

The unhappiness of many working people with their deteriorating economic situations, and the feeling that they have been harmed rather than benefitted from globalization, is the driving force. All are aware that globalization has created "winners and losers" (Gantz 2017).

Despite the appreciable amount of benefits that globalization delivered in the business society, in particular within the sustainable development of the countries while engaging the smooth access to different goods and services, the implications in the practice have shown that the process of globalization invoked some inevitable challenges. For instance, diversity in labor standards and politics is one of the numerous more.

The question that this raises is, given the challenge of globalization of the world markets and the liberalization of domestic markets, can the same degree of social protection still be provided as before? Or must labor regulation be changed to stimulate competitiveness and create jobs? These questions raise the issue of the economic/social divide. The work of the WTO and that of the ILO seem to converge at the crossroads of economic development and social equity. The significance of international labor law institutions on the economic/social divide will no doubt be given attention anytime the issue of core labor standards is raised at the international level (Addo 2015).

Globalization changed the world and had an influence on the labor law and labor standards along with the way of their incorporation in the trade agreements, which also composed the flexibility for a discussion dealing with the subject of the labor chapter, labor issue, and labor standards in a comprehensive economic trade agreement as CETA. It is indisputable that the process of globalization produced the expansion of new technology and develops the interconnection between the countries among themselves, the access to new cultures and all the distinctive things that culture brings with itself like the specific food or distinctive music couldn't be imagined differently. Successively, with the acknowledgment of globalization, we have a high-level competition, in particular, that is agreeable to the ordinary citizens which are giving them indefinitely large choices that they didn't have previously, accompanying the new choices which subsequently lay the foundations of new customers on a global level.

In light of the increasing number of labor provisions in trade agreements and the variety of approaches, the question arises as to the practical implications of these provisions; in particular, whether labor provisions have created more space for improving labor standards and whether the ability to implement existing labor standards has improved. Conversely, the question also arises as to whether there is evidence that substantiates concerns that such provisions could be used for protectionist purposes (International Labour Organization 2015).

It's oversimplified the perception for indicating the importance of globalization's weaknesses, but who encompassed globalization on the negotiation stage and who arranged the intermixture of the trade issues and labor issues on that negotiation stage? Globalization is a process that has a great number of beneficial sides in the business practice, additionally is understandable that there are widespread challenges that globalization is persuading. Globalization brought into existence a world that is in such a manner connected evermore while at the same time some processes are more distant

than ever since many of the distinctive fragments in the global culture began to have the appearance of failing to keep sight of their diversity. Apart from everything else, what is the link between globalization, trade, and labor?

There are, however, some common findings: globalization can lead to considerable job turnover and result in workers losing their jobs and changing sectors, especially in the short term. Those who lose their jobs require support to recover. There also seems to be the consensus that globalization affects certain groups – such as low-skilled workers – more than others (International Labour Organization 2017).

According to the previous mention, the effects in consideration of trade liberalization are implicated on the low-skilled workers who are struggling on the labor market while being exploited from one point of view and losing their position on the labor market from another perspective. That is an absolute manifestation which indicates that globalization and trade liberalization i.e. free trade straightforward doesn't mean by default improved, sustainable but the most crucial of all - fair trade!

Core labor standards are also human rights and to that extent would be covered by the exceptions on public morals. In other circumstances, other labor standards are unlikely to be covered. However, once again, the fact that CETA includes obligations concerning labor standards that go beyond core labor standards is significant. As mentioned, CETA requires the parties to promote the objectives in the ILO Decent Work Agenda and the 2008 ILO Declaration on Social Justice for a Fair Globalization, and that could be taken as an indication that the parties agree that these values are part of their respective 'public morals'. Beyond this, however, the extent to which labor standards are seen as a matter of common values, and how much a matter of each party's comparative advantage, remains to be determined (Bartels 2017).

Understanding the comprehensive approach from the CETA's contracting parties towards several different fields triggering Chapter 23: Trade and Labour from the Agreement, it's not enough the only incorporation and providing of the labor standards to be only in that way in a trade agreement which has a focus on the economy. The assurance that the labor standards will be respected, remain high and their excellent implementation in the business practice will be provided needs to be more specific. CETA is the most ambitious treaty signed by the EU to date, encompassing as it does a broad spectrum of measures relating to entry barriers to product markets, investment and public sector procurement and purchases usually not open to foreign companies, along with provisions on other aspects relating to intellectual property rights, labor mobility, etc. More specifically, concerning lifting customs duties, the CETA eliminates 99% of tariffs on trade in industrial products between the EU and Canada as from the treaty's entry into force (González and Mora; Esther and Manrique Simón 2017).

The international trade agreements also have their function in managing the challenges that globalization produces on the negotiation platform for exemplification the certain ones making allowances for the connection with the labor, labor standards,

and the workers. Those challenges refer to handling the workers' immigration, the mechanism of recruiting the foreign workers, the process of purchasing the job across the border while having all the benefits and privileges of being a worker with respected labor standards on a high level, forbidding the exploitation of the workers with strengthening the tax regulation and also the impact of the transition of the workers across the borders on the domestic job loss.

Transparency in international negotiations is also important for broader political reasons: "Already at an early stage, transparency is important to address public reluctance, suspicion and engage with any opposition expressed regarding a particular trade deal" (Panagiotis 2016).

THE INTERDEPENDENCE BETWEEN GLOBALIZATION AND THE COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT BETWEEN CANADA AND THE EU

CETA is a very important statement for the international community at present. It affirms a commitment to rules-based trade, to open economies, and importantly to multilateralism. CETA not only lowers actual barriers to market access, but also improves on both Canada's and the EU's previous binding commitments under the World Trade Organization's (WTO) rules, both in regards to tariffs and to non-tariff barriers (NTBs) that control market access to services, investment, and government procurement. These binding commitments create greater certainty of market access for the parties to the agreement, in addition to the improved market access on an applied basis (Ciuriak 2017).

Due to the significance of globalization within every sphere, the approaches in the view of the business society are progressing towards, but in the accomplishment processes, some standards in the labor law are not unquestionably protected and are not undeniably on the appropriate trajectory as they should be. Nevertheless, with the synthesis between the trade and the labor, the de facto results in the business practice it's imperative to be in the favor of the workers, not otherwise. The affiliation between globalization and CETA is established in the very beginning of Chapter 23 of CETA, named 'Trade and Labour' where it is stated that the Parties recognize the value of international cooperation and agreements on labor affairs as a response to the international community to economic, employment and social challenges and opportunities resulting from globalization. They recognize the contribution that international trade could make to full and productive employment and decent work for all and commit to consulting and cooperating as appropriate on trade-related labor and employment issues of mutual interest (CETA, Article 23.1 Context and objectives, 184). Taking under consideration that globalization has an essential impact on why a labor issue is a topic of discussion in a trade agreement like CETA, of the highest importance

is to mention that the contracting parties didn't make an evaluation of the possible impact of CETA when the Chapter 23 of CETA, named 'Trade and Labour' is under examination in a manner how all purposes towards the implications in the business practice would be reliable and provide the proper implementation.

In the previously stated CETA Chapter, in the Multilateral labor standards and agreements it is stated that according to subparagraph 2(a), each Party shall ensure that its labor law and practices embody and provide protection for working conditions that respect the health and safety of workers, including by formulating policies that promote basic principles aimed at preventing accidents and injuries that arise out of or in the course of work, and that are aimed at developing a preventative safety and health culture where the principle of prevention is accorded the highest priority. When preparing and implementing measures aimed at health protection and safety at work, each Party shall take into account existing relevant scientific and technical information and related international standards, guidelines or recommendations, if the measures may affect trade or investment between the Parties. The Parties acknowledge that in case of existing or potential hazards or conditions that could reasonably be expected to cause injury or illness to a person, a Party shall not use the lack of full scientific certainty as a reason to postpone cost-effective protective measures (CETA, Article 23.3 Multilateral labor standards and agreements, 185).

In the legal language, there is a different interpretation to what certainly the word 'shall' implies, but even if in case the interpretation of the word 'shall' refers to a legal obligation which implementation is mandatory, the prescribed repercussions must be provided, which will be activated at the moment when someone from the contracting parties is acting contradictorily in comparison with the provisions in CETA.

In this case, if the parties shall ensure the labor law and shall provide protection for working, what is the repercussion if the contracting parties are not acting upon that? Or, what are the consequences if the parties are not using only relevant scientific and technical information and related international standards, guidelines, or recommendations, if the measures may affect trade or investment between the Parties when there is nothing provided on the contrary? Each Party reaffirms its commitment to effectively implement in its law and practices in its whole territory the fundamental ILO Conventions that Canada and the Member States of the European Union have ratified respectively. The Parties shall make continued and sustained efforts to ratify the fundamental ILO Conventions if they have not yet done so. The Parties shall exchange information on their respective situations and advances regarding the ratification of the fundamental as well as priority and other ILO Conventions that are classified as up to date by the ILO (CETA, Article 23.3 Multilateral labor standards and agreements, 185).

The scope of interest in this part is about the efforts that the parties will make to ratify the fundamental ILO Conventions if they have not yet done, also with no consequences and repercussions for acting neutral or on the contrary, creates the set of

circumstances for launching the dilemma are the rights of the workers and the labor standards remaining uphold high and respected in a trade deal as CETA.

In addition to its obligations under Article 27.1 (Publication), each Party shall encourage public debate with and among non-state actors as regards the development and definition of policies that may lead to the adoption of labor law and standards by its public authorities (CETA, Article 23.6 Public information and awareness, 186).

Considering the point that CETA influences the public rights and public services, the public had the right to be involved in the process of negotiations, but there was no public debate due to those topics, even a slice of encouragement about the development of policies that may lead to the adoption of the highest labor law and standards.

The Parties shall consult to reach an agreement on the composition of the Panel of Experts within 10 working days of the receipt by the responding party of the request for the establishment of a Panel of Experts. Due attention shall be paid to ensuring that proposed panelists meet the requirements set out in paragraph 7 and have the expertise appropriate to the particular matter (CETA, Article 23.10 Panel of Experts, 189).

Even if the word 'shall' in this case is interpreted as a mandatory 'must', how is secured that the proposed panelists will meet the requirements set out in paragraph 7 and have the expertise appropriate to the particular matter? What are the repercussions if there is an elected member who doesn't have the appropriate expertise?

If the final report of the Panel of Experts determines that a Party has not conformed with its obligations under this Chapter, the Parties shall engage in discussions and shall endeavor, within three months of the delivery of the final report, to identify appropriate measures or, if appropriate, to decide upon a mutually satisfactory action plan. In these discussions, the Parties shall take into account the final report. The responding Party shall inform on time its labor or sustainable development advisory groups and the requesting Party of its decision on any actions or measures to be implemented. Furthermore, the requesting Party shall inform on time its labor or sustainable development advisory groups and the responding Party of any other action or measure it may decide to take, as a follow-up to the final report, to encourage the resolution of the matter in a manner consistent with this Agreement. The Committee on Trade and Sustainable Development shall monitor the follow-up to the final report and the recommendations of the Panel of Experts. The labor or sustainable development advisory groups of the Parties and the Civil Society Forum may submit observations to the Committee on Trade and Sustainable Development in this regard (CETA, Article 23.10 Panel of Experts, 189).

If some party from the agreement has not complied with its obligations under this Chapter, how is going to be convictable that will fulfill its obligation, what are the consequences of that party from the agreement in case it doesn't conform to the previously mention obligations?

The open space for free interpretation is bringing into question the strength of the protection that workers, labor law, and labor standards are having under CETA.

Over the last two decades, the number of trade agreements with labor provisions has risen considerably. Typically, such provisions establish minimum standards of working conditions and labor rights and may also include a framework for cooperation, monitoring, and conflict resolution in differing forms. While there are clear similarities between the labor provisions used in different trade agreements, their content can vary considerably as a result of different approaches and country contexts. Their increasing use, in combination with the spread of different approaches, makes it important to explore the effectiveness of such labor provisions (International Labour Organization 2017).

PROVIDING LABOR STANDARDS IN THE TRADE DEALS AND THE CHALLENGING FROM THE FOREIGN INVESTORS

On investment protection, the Commission underlined the necessity to formulate substantive principles clearly and tangibly. It also underlined the importance of establishing a balance between different interests, such as the protection of investors against state intervention and the states' right to regulate in the public interest. Overall, it is possible to discern a fairly investor-centric narrative throughout the text which sets the priority as the protection of EU investors abroad (Ünüvar 2017).

The joint effort for making a combination of trade and labor is a very ingenious one, but an affiliation of putting a Labor Chapter into an economic agreement – very ambiguous. It is double-edged what's happening with the cross-border movement of employees, but not only on hard copy but in the business practice where labor mobility becomes an issue that is treated as a trade issue in a comprehensive economic agreement.

In addition to liberalizing trade and investment in goods and services, as well as facilitating labor mobility and regulatory cooperation, CETA, with its Chapter 19, aims to create a level playing field in matters of government procurement between Canada and the European Union. When the CETA negotiations began in 2009, EU firms did not have access to government procurement markets in Canada at the provincial and municipal levels (LeBlond 2016). Trade agreements as CETA have the primary aim to stimulate economic activity, foster investments, and support sustainable economic growth, so according to the primary aim, there is a necessity for the trade deal to provide an effective implementation of the labor standards and proper protection of the workers' rights. These provisions give investment tribunals significant discretion in interpreting states' obligations towards foreign investors and investments. It can be difficult to ascertain the evaluative criteria that a tribunal will employ to determine whether a breach has occurred and thus difficult to predict when a state will be held liable to

compensate an investor. As a result, a concern—borne out in some of the decided cases—is that these treaty provisions may unduly expose governments to compensate investors for non-discriminatory laws, regulations, and administrative decisions adopted to promote public welfare (Henckels 2016).

The requirement of positioning labor issues and treating the labor mobility in a trade agreement is a tremendous justification for the protection that these kinds of trade and economic deals are providing the investors and corporations.

Policymakers have used the presence of 'strong' labor provisions in trade agreements to argue that the social consequences of trade commitments are taken seriously. How are they now responding, and how should they respond in the future, to the serious deficiencies in those provisions which are becoming apparent? At the same time, is the ineffectiveness of labor provisions becoming part of a burgeoning class critique of trade policy? And do these issues require greater engagement from mainstream academic and trade policy communities? (Harrison 2019).

The CETA's provisions allow the foreign investors to directly challenge the actions of governments i.e. allows foreign companies to pursue governments directly for damages for alleged violations of the agreement. But, what has a connection with the improved labor standards, their implementation in the business practice while also at the same time being one of the biggest issues arising from the conclusion of CETA?

There is little doubt, in practice, that the violation of legitimate expectations will be a provision that investors will continue to invoke. With this less precise provision, the risk is increased that state behaviors could be found to constitute a violation of the legitimate expectations of investors (Jadeau and Gélinas 2016). The connection between the chapter which is provided with the labor standards and the chapter which allows the foreign investors to directly pursue claims is what makes the upholding of the high standards disputable because regardless of the sugarcoated language corporate vocabulary that is used in CETA, there are a variety of issues that are arising from the formulation of the provisions. The state's *lato sensu* right to regulate under public international law allows it to enter into international investment agreements and thereby limits its *stricto sensu* right to regulate.

In WTO law, this *stricto sensu* right to regulate broadly corresponds to the concept of balance and the embedded liberalism compromise. And although the term has been used in WTO law, it is with international investment law that the right to regulate started to be debated as such and was ascribed a particular meaning (Titi 2016).

CONCLUSION

The new challenges that globalization has brought are two-sided: on the one side there are the new opportunities, the new movement of human capital, the business association between countries from the whole world, diversity of integration on many levels in different fields, promoting mutual support, but on the other side the globalization wasn't really helpful in the continuous process of unemployment, raising the labor standards and lowering the exploitation of the working force. The economic growth should be in a function to protect the lowest unprotected levels in the society and to assure well their position, despite the reassurance regarding the capital, business, investment of the investors, because the inequality is more visible than ever. It is indisputable that globalization offers wide-open access among people and cultures when the goods, services, and trade are in question, but in that process considering the idea that the culmination already took its steps, there is a huge precariousness due to globalization, trade liberalization and the process of including the labor standards and mobility in trade agreements as CETA.

Extremely important to emphasize is the fact that the value of an agreement like CETA is imposing in the field of the economy – stimulating export and import, creating new opportunities, and promoting sustainable development. The bridge that CETA builds between the foreign investors and the trade possibilities is rock-solid and unbreakable because it's attracting foreign investors to stimulate direct investment in developing countries. But, the path that leads towards upholding high labor standards is very fragile and delicate. Chapter 23: 'Trade and Labour' from CETA as a chapter in which are provided the right to regulate the levels of protection and labor priorities, the multilateral labor standards and agreements, the upholding levels of protection afforded in the labor law and labor standards, the enforcement procedures, the administrative proceedings and review of administrative action, the public information and awareness, the cooperative activities, the institutional mechanisms, the panel of experts and the dispute resolution, the only merit toward responsibility for fulfilling the obligations coming from this provisions in the chapter is with the word 'shall' without provided repercussion, consequences and sanctions if some from the contracting parties are acting on the contrary from the provided. Taking into consideration that opening the domestic economy to the world economy has an important gap into the domestic jobs and losing workers without proportion of gaining new, doesn't prove the general presumption that the regular citizens are those who are having the greatest benefits from the trade liberalization.

Appreciating the analysis above, my conclusion is that labor mobility is not an issue that should be stated in an economic agreement as CETA unless it has full protection, not only with the non-obligatory word 'shall' because that statement is not protecting the workers' rights, on the contrary, is leading to creating unemployment. It's

a great doctrine in the same agreement to be included the foreign investors, the economy, the transactions, the sustainable development, and the labor standards, but the greatest will be if those provisions which are towards the labor law and labor standards would be assured in their implementation and not to be incorporated in an economic and trade agreement just as a cover-up for the real intention and protection of the foreign investors in which the workers are collateral damage. 

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